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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

_____

IN THE MATTER OF APPLICATION BY 'JR161'
FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS OF
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

_____

Fionnuala Connolly (instructed by James Strawbridge Solicitors) for the applicant
Joseph Kennedy (instructed by the Crown Solicitor's Office) for the respondent

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SCOFFIELD J

Introduction

[1] This is an application for judicial review of a decision of the Secretary of State for the Home Department ('the Secretary of State' or 'the Home Secretary') by which the applicant was refused permanent leave to remain in the United Kingdom as a victim of domestic abuse and a further decision on behalf of the Home Secretary by which the initial refusal was maintained on administrative review.

[2] The core issue in these proceedings is the significance of a decree nisi, followed by a decree absolute, granted by the High Court of Justice in Northern Ireland in the determination of an application for leave to remain as a victim of domestic violence where the applicant's marriage was dissolved on the grounds of irretrievable breakdown as evidenced by the unreasonable behaviour of their partner, where that behaviour does or could amount to domestic abuse in the sense in which that term is understood in the relevant Home Office policy.

[3] The applicant was represented by Ms Connolly, of counsel; and the respondent was represented by Mr Kennedy, of counsel. I am grateful to both counsel for their helpful written and oral submissions.

Anonymity

[4] The applicant in this case has sought anonymity. On balance, I have determined that that application should be granted. This is partly in protection of the interests of the applicant but also in protection of the interests of her former husband. He was unrepresented in these proceedings and was not put on notice of them (since he is not directly affected by the decisions under challenge). However, as appears below, much of the applicant's case concerns her contention that her marriage ended as a result of behaviour on his part which amounts to domestic violence or domestic abuse under the terms of the relevant Home Office policy. It is correct that the applicant's husband did not challenge the relevant allegations made against him in the applicant's divorce proceedings. However, those proceedings would not have involved the applicant's case being aired in open court. Rather, such cases are generally heard and dealt with by a judge sitting in chambers: see rule 2.30 of the Family Proceedings Rules (Northern Ireland) 1996. To preserve the privacy protected by those rules, I consider it appropriate to anonymise this judgment and certain of the names within it.

Factual Background

[5] The applicant is a Filipino national and resides in Belfast. She had lawful leave to enter and remain in the United Kingdom (UK) from 2015 until January 2021, as the spouse of a British national (now her former husband). She married in August 2010. She was then granted a 30-month visa to enter and remain in the UK as a spouse in February 2015. After the initial 30 month period, she successfully renewed her visa and was granted another 30-month visa in October 2017. She makes the points that, throughout her time in the UK, she has been in employment and she has never been in any trouble with the police.

[6] The applicant initially hoped to make a permanent residence application on the basis of her continuing marital relationship. However, she says that she had to leave her matrimonial home in November 2018 and thereafter seek a divorce. She petitioned for divorce in January 2019. She made the case in her petition for divorce that she had left the matrimonial home in November 2018 and that the marriage had broken down on the basis of the unreasonable behaviour of her husband. After the breakdown of the marriage in November 2018 the Home Office curtailed her leave to remain, which was then due to expire in February 2019. It seems likely that this arose because the applicant's husband, or someone connected to him or on his behalf, notified the immigration authorities of the breakdown of the relationship. This curtailment decision was the subject of a judicial review challenge on the applicant's part which was successful, but the details of which are not relevant for present purposes.

[7] The applicant's evidence in these proceedings is that, from late 2017, her former husband developed a serious alcohol problem and that she could not cope

living with him and that she simply had to leave the family home. She says that it was frightening and unpredictable living with him and his alcoholism; and that "*he was intimidating, abusive and controlling towards me.*" However, a key issue in these proceedings is the significance of the court's orders granting her a divorce when the Secretary of State came to assess her application. It is therefore important to note carefully what was asserted in the applicant's petition for divorce. The petition alleged that the applicant's husband had behaved in such a way that she could not reasonably be expected to live with him. The particulars of unreasonable behaviour given were as follows:

> "*(i) The Petitioner would say that her marriage became strained about 12 months ago when the Respondent began drinking alcohol to excessive levels. The Petitioner would say the Respondent developed an alcohol dependence which put an unbearable strain on their marriage. The Petitioner attempted to maintain the marriage and manage the Respondent, his addiction and problems associated with the addiction.*
>
> *(ii) In the preceding 12 months to this petition, the Petitioner would say that the Respondent's behaviour became increasingly aggressive, unruly and dismissive of her. The Respondent made it clear he did not wish to share a bed with the Petitioner. The Respondent's alcohol consumption was such that the Petitioner could not engage or attempt any form of reconciliation with the Respondent.*
>
> *(iii) The Petitioner would say that when the Respondent was in the matrimonial home and whilst the Respondent was under the influence of alcohol she became afraid to leave her bedroom, the Respondent would slam doors, smash and drop things throughout their home.*
>
> *(iv) The Petitioner would say that the Respondent had asked her to leave the property on more than one occasion in the preceding six months to this petition.*
>
> *(v) The Petitioner would say that life became intolerable in this environment and she was forced to leave the matrimonial home on 19 November 2018.*"

[8] The applicant's solicitor served the divorce papers on her then husband in January 2019 by first class post at their former matrimonial home where the applicant knew him to be living. There was no response or formal acknowledgement of service of her petition by him. A further letter was sent to him by the applicant's solicitor by recorded post, however, and was signed for by her

husband, with Royal Mail providing proof of delivery. This permitted the applicant's solicitor to make an application to court for an order deeming good service of the petition on the applicant's husband. Such an order was granted by Master Bell in July 2019. As a result, the applicant's husband was deemed as a matter of law to have received the petition.

[9] Thereafter, the application for a decree nisi was listed on 6 January 2020 before the Rt Hon Sir Reginald Weir sitting in the Family Division of the High Court. As is customary in such hearings, the applicant gave evidence on oath. She adopted the contents of her petition as her evidence. The judge granted a decree nisi on that date. Insofar as material, the text of the order provides as follows:

> "*The Judge, sitting in Chambers, having taken the oral evidence of the Petitioner in support of the Petition filed in this Cause and having heard Counsel thereon, the Respondent not defending the Suit at the hearing, gave Judgment in Court and held that:-*
>
> *the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent*
>
> *and that the marriage [between the Petitioner and the Respondent]… Has broken down irretrievably and decreed that the said marriage be dissolved unless sufficient cause be shown to the court, within six weeks from the making of this decree why such decree should not be made absolute.*"

[10] A decree absolute was subsequently issued on 11 March 2020. It referred back to the decree nisi made on 6 January and recorded that, no cause having been shown to the court as to why that decree should not be made absolute, the decree nisi was made final and absolute and the marriage dissolved.

[11] The applicant then proceeded to apply for indefinite leave to remain in the UK as a victim of domestic violence, completing the application online on 18 May 2020 and paying a fee of £2,389.00. The papers relating to her divorce were provided to the respondent for consideration in the course of the applicant's application. In the section of the form asking for details of what had happened to the applicant, her application said this:

> "*See divorce petition enclosed with this application which sets out the particulars of domestic violence, abuse and control. This Petition was approved and adopted by the Court at the Decree Nisi hearing, thus my petition on the grounds of unreasonable behaviour on the part of my husband was held to be valid by the court. Over the preceding months before I left the matrimonial home I observed/witnessed increasing alcohol consumption on the part of my former spouse, approximately*

six months before. I went to my GP in 2018 about these issues. GP gave me medication, as I was unable to sleep feeling worried, scared and anxious. My GP offered calling social services, the GP was aware as was in a panic state in the latter stages of my marriage to my former spouse. Every time my former husband consumed alcohol his behaviour would be erratic and unpredictable. He would bang doors and throw objects about the property. He was aggressive, physically imposing and would control use of keys to property. He didn't give me the mail key to allow me to check the mail/letters whilst I was living in the home. This was very controlling. He always brought up many issues and started insisting he should have some control of my finances, that I should give him money for my food. When I would come home from work, early in the morning after a shift, he would wake me up to get me to go to my bank or the ATM to get cash for him. This would have been so he could buy alcohol. On one occasion this was witnessed by my friend. She can provide a supporting statement. Another type of argument and demand that occurred regularly, was that I should leave the property late at night to purchase alcohol. He wanted me to leave the property late night, alone, to buy alcohol for him. When I refused he would become aggressive and irate, he would often be under the influence, I would be fearful and I would flee into my own bedroom and take refuge there."

[12] In the next section of the form, the applicant again made the case that her divorce petition based on unreasonable behaviour had been approved and adopted by the High Court. She accepted that she had not reported any violence to the police or any violence or abuse to any other agencies. She said that she did not feel comfortable or safe doing so; and that when she felt strong and ready she simply left the family property.

[13] In addition, the applicant submitted a witness statement of a friend, Ms GC ('the witness'), whose evidence was said to corroborate her marital problems and incidents of domestic abuse or control exercised by the applicant's husband in their home. The statement identifies the witness as one of the applicant's friends and a former colleague. The witness says that she got to know the applicant's former husband also and that the applicant would have often invited her to their apartment. She added that during that time she noticed that the applicant's husband was barely there: he was either working or out drinking with his friends. He constantly left the applicant on her own and the witness felt bad for the applicant because she had left her life in the Philippines to build a new life here and her husband was absent for most of the time.

[14] The witness also said that she had witnessed "*a couple of times*" when the applicant's husband came home from his night shift and she heard him shouting in the other room and asking the applicant to wake up and get him money from a cash

machine. The witness came to conclude that there was something wrong with the relationship between the applicant and her husband and the applicant told her that she was physically and emotionally exhausted because of how her husband had been treating her. There were "*a few instances*" when the witness was spending time with the applicant and the applicant's husband was drinking by himself. He got drunk and would start shouting and demanding that the applicant do something like getting more drinks or serving dinner. This made the friend feel more uncomfortable as time went by. She started seeing the applicant less but would still receive messages from her indicating how sad and upset she felt in relation to how she was being treated by her husband. The witness's evidence was that the applicant did not have any sort of emotional support from her husband and that she tried her best to tolerate the "*emotional abuse*" with which she had to deal.

[15] Finally, the applicant also provided excerpts from her General Practitioner notes from November 2018. These record an entry of 14 November 2018, a few days before the applicant says that she left the matrimonial home, which is in the following terms:

> "*Very upset since recent breakup with her husband last week. He is Irish, has been drinking and accused her of having another man which is not the case. She is from the Philippines and is working as a manager in [a fast food restaurant] in Belfast. She has no family here, she doesn't have contact with any of her in-laws, she has a few Filipino colleagues at work.*"

[16] The doctor prescribed the applicant with sleeping tablets and made a further appointment for her in two weeks' time to follow up what was described as a "*stress related problem.*" The entry in relation to that further appointment, on 28 November 2018, indicates that the applicant was "*more settled*" and that "*she has decided to move out and is quite reconciled with the situation.*" A further short course of the sleeping tablet, which the applicant had found helpful, was prescribed.

[17] The applicant has averred that she felt that that, on the basis of all of the evidence she had provided, she had clearly demonstrated on the balance of probabilities that she had been the victim of domestic abuse within the meaning of that term in the Home Secretary's policy (see paragraph [39] below).

The respondent's initial decision

[18] The applicant challenges the decision of the Home Secretary made on 8 December 2020, by which her application for permanent leave to remain in the UK as a victim of domestic violence was refused. The decision letter in the case indicated that all aspects of the applicant's claim, including that she had been subjected to controlling and coercive behaviour, had been considered in line with the expansive definition of domestic abuse discussed below. Notwithstanding this and the evidence which the applicant had provided, it was considered that she had not

provided evidence that her relationship with her partner had broken down permanently as a result of domestic abuse.

[19] The decision letter summarised the applicant's version of events, including that her ex-husband would bang doors and throw objects around, that he was aggressive and controlled the use of keys to the property, and that he would become aggressive when she refused to purchase him alcohol late at night. The letter continued, in a passage of which the applicant's counsel was strongly critical, as follows:

> "*Whilst it is accepted that this is your account of events, you have failed to provide any supporting or corroborating evidence to substantiate your claim. The information within the submitted application form is not considered to be sufficient or adequate, supportive documentary evidence, as the account detailed upon each has been taken entirely from your own personal, verbal testimony and is not considered to be from a reliably independent or firmly impartial source.*"

[20] The contents of the applicant's petition for divorce were also summarised. However, the court documents which she had submitted were dismissed on the following basis:

> "*… however there is no evidence within these documents indicating or demonstrating that the court has accepted any of your claims to be true. As a result, this documentation cannot be relied upon to sufficiently establish a claim to be a victim of domestic violence.*"

[21] Having summarised the third party witness statement, the decision letter went on to comment as follows:

> "*It must be considered that a great many people may indeed suffer from ongoing issues arising from marital difficulties, such as incompatibility. However, this does not necessarily constitute domestic abuse. Furthermore, this testimony is not considered to be from a source that could be reliably considered as entirely independent or sufficiently impartial, due to the close personal connections that you have with the author. As a result, it is not deemed that this item forms steadfastly unbiased or categorically non prejudicial information. Therefore, this item is not deemed to provide sufficiently acceptable or independently corroborative evidence in support of your claim.*"

[22] As to the entries in the applicant's GP notes, the letter observed that the "*alleged detailed discussion is not indicative of domestic abuse, and indeed the Doctor makes no conclusions regarding your claim to be a victim of domestic abuse.*" It is noted that the

history set out by the doctor "*simply repeats the account given to the Doctor by you*." Since the information recorded in the notes was provided to the GP by the applicant, it was dismissed as having "*been issued based solely upon unsubstantiated allegations made by you and has not been shown to have been tested in any other manner.*" As a result, it was said that the GP entries "*cannot be relied upon to sufficiently establish your claim to be a victim of domestic violence*."

[23] In summary, none of the evidence provided was "*considered to be sufficiently adequate evidence to establish that you are a victim of domestic violence, as alleged*", whether considered independently or "*in the round.*" The letter said that "*the submitted items continue to prove insufficient, unconvincing and generally lacking in impartiality or independence of source*."

The respondent's review decision

[24] The applicant lodged a request for administrative review with the Home Office on 16 December 2020. In the section of the application where her adviser was required to explain why the initial decision was wrong, the applicant contended that the decision maker had not understood the nature of the evidence which she had provided, nor the weight that should be attached to it, including because "*it is misconceived to say personal testimony cannot be considered reliable as a starting premise*." Significant reliance was placed on the court orders which had been provided and the fact that the High Court had accepted the applicant's evidence at the decree nisi hearing. The applicant was particularly critical of the characterisation of the issues her evidence had raised as being mere "*marital difficulties, such as incompatibility*"; and contended that this flew in the face of the assertion that the authorities adopted a modern and broad interpretation of domestic abuse. She contended that the GP records were highly significant as providing contemporaneous evidence which corroborated her account of the breakdown of the relationship.

[25] By decision of 12 January 2021 the Home Secretary maintained the refusal of leave to remain in the administrative review (at which time the applicant was also advised of her liability to removal and placed on bail, a condition of which was that she was not permitted to work in the UK). The applicant also challenges this decision.

[26] In the decision letter on the review, a key passage of the reasoning is as follows:

> "*Consideration has been given to the points you have raised. After reviewing the evidence and the decision letter it is deemed that the original caseworker's decision is correct, the Immigration Rules require you to provide evidence which proves that your relationship was caused to break down permanently as a direct result of domestic abuse. Therefore, any*

evidence which is not independent from your own testimony cannot prove that you are a victim of domestic abuse.

On review it is noted that the information within your application form and submissions made by your representatives is not considered to be sufficient or adequate, supportive documentary evidence, as the account detailed upon each has been taken entirely from your own personal testimony and is not considered to be from a reliably independent or firmly impartial source.

Furthermore, we are satisfied that the Northern Ireland Court documents have been considered correctly. On review of the documents it is considered that the information within your divorce petition has been taken entirely from your own personal testimony and therefore cannot be considered to be from a reliably independent or impartial source. In addition, it is noted that there is no information within the documents provided indicating or demonstrating that the court has accepted any of your claims to be true. Therefore, the documentation cannot be relied upon to sufficiently establish your claim to be a victim of domestic abuse."

[27] The review decision also maintained the approach that the third party witness evidence was not sufficiently impartial and could not, on its own, be considered persuasive. As to the entries in the applicant's medical notes, it was noted that the doctor made "*no conclusions regarding your claim to be a victim of domestic abuse*" but simply repeated the applicant's account, without testing her unsubstantiated allegations.

[28] In summary, the original decision was maintained, on essentially the same grounds, and with a conclusion that "*the original caseworker has correctly assessed your evidence…*" In light of the way in which the review decision is expressed, I consider that the applicant is entitled to rely on any error of law or misdirection in the original decision as also infecting the review decision. That is because, in the circumstances of this case at least, the review decision essentially adopts and reaffirms the initial decision of 8 December 2020 in all material respects.

The Proceedings

[29] At the time of the impugned decisions, the applicant was in full-time employment as a care assistant at a care home in Belfast; and was also employed as a manager in a fast food outlet. The applicant's application for leave to apply for judicial review was lodged on 25 January 2021. It was accompanied by a certificate of urgency signed by counsel seeking that it be dealt with as a matter of urgency since the applicant was at risk of losing both of her jobs in light of the condition of her immigration bail precluding her from working in the UK. Her employers had

informed her that they were only able to hold her jobs open for her for a further short period. I granted the applicant leave to apply for judicial review on 26 January 2021 and, on 29 January 2021, granted interim relief to the effect that the applicant should be permitted to work pending the outcome of these proceedings or further order. The applicant's status as a key worker and the public interest in her being permitted to continue with that work during staffing pressures in the care home in which she worked arising from the Covid-19 pandemic appeared to me to clearly favour the grant of interim relief. Upon the grant of leave, the respondent undertook that the applicant would not be removed pending the determination of the proceedings.

[30] The principal relief sought by the applicant are orders of *certiorari* in relation to each impugned decision and an order of *mandamus* requiring the Home Secretary to remake her decisions in accordance with law. Her grounds of challenge are illegality; irrationality; procedural unfairness; failure to attach sufficient weight to certain material factors; breach of the Home Secretary's own policy; legitimate expectation (in the form of failure to follow the published policy); and breach of Article 8 ECHR. There is a considerable overlap between a number of the grounds.

Relevant provisions of the Immigration Rules

[31] A key contention on the part of the applicant is that she demonstrably satisfied the substantive requirements of the relevant portion of the Immigration Rules for the grant of indefinite leave to remain as a victim of domestic violence. She relies, in particular, on section D-DVILR.1.3 of Appendix FM to the Immigration Rules.

[32] Appendix FM of the Immigration Rules deals with family members. Section DVILR of that appendix provides for indefinite leave to remain (settlement) as a victim of domestic abuse. Under paragraph DVILR.1.1:

> "*The requirements to be met for indefinite leave to remain in the UK as a victim of domestic abuse are that –*
>
> *(a) the applicant must be in the UK;*
>
> *(b) the applicant must have made a valid application for indefinite leave to remain as a victim of domestic abuse;*
>
> *(c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and*
>
> *(d) the applicant must meet all of the requirements of Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic abuse.*"

[33] There is no controversy about the applicant's compliance with sub-paragraphs (a) to (c) of paragraph DVILR.1.1. The key issue in her case is whether she met the substantive requirements set out in Section E-DVILR, which provides for eligibility for indefinite leave to remain as a victim of domestic abuse. Paragraph E-DVILR.1.1 provides that, "*To meet the eligibility requirements for indefinite leave to remain as a victim of domestic abuse all of the requirements of paragraphs E-DVILR.1.2. and 1.3. must be met.*" There is no issue about the applicant's compliance with the requirements in paragraph E-DVILR.1.2, since her first grant of limited leave under Appendix FM was as the partner of a British Citizen (her now former husband) and her subsequent grant of limited leave was also as his partner. The key issue in this case, therefore, was her compliance with the requirement in paragraph E-DVILR1.3.

[34] Paragraph E-DVILR.1.3 provides as follows:

> "*The applicant must provide evidence that during the last period of limited leave as a partner of a British Citizen, a person present and settled in the UK, a person with refugee leave, or a person in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), under paragraph D-ECP.1.1., DLTRP.1.1 or D-LTRP.1.2 of this Appendix, or during their only period of leave under paragraph 352A, the applicant's relationship with their partner broke down permanently as a result of domestic abuse.*"

[35] This case concerns the core requirement in the above provision that the applicant must provide *evidence* that her relationship with her partner broke down permanently as a result of domestic abuse. What does the requirement to provide such evidence entail and how may it be discharged?

The relevant policy

[36] At least a partial answer to the questions posed above is provided in the Secretary of State's own policy on these matters. The decision letter in this case of 8 December 2020 makes reference to the fact that, in March 2013, the government introduced a new definition of domestic violence to be used across all government departments; and the letter emphasises that the definition of domestic violence and abuse is "*any incident or pattern of incidents such as, controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality.*" The letter notes that this can include, but is not limited to, psychological, physical, sexual, financial, or emotional abuse; that controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by, *inter alia*, isolating them from sources of support or exploiting their resources and capacities for personal gain; and that coercive behaviour is an act, or pattern of acts, of assault, threats, humiliation and intimidation, or other abuse that is used to harm, punish or frighten the victim. When assessing if a person has been the victim of domestic abuse, the decision letter

stated that "*no differentiation is made between psychological (mental) abuse and physical abuse.*"

[37] The Home Secretary's published policy on the issues which form the subject-matter of these proceedings is now to be found in a Home Office policy document entitled '*Victims of Domestic Violence and Abuse*', Version 14.0, published on 5 February 2018. In its introductory section it is described as telling caseworkers "*about how to consider applications from people who claim to have been victims of domestic violence or abuse.*" It is expressly relevant to those seeking leave to remain under Appendix FM, section DVILR of the Immigration Rules. The introductory section of this most recent version of the policy also summarises the areas where there have been changes from the previous version, including "*Clarification of evidence required.*"

[38] The policy document is relevant to the issues raised in the present proceedings in (at least) two significant respects: first, the approach taken by the respondent to what will be considered to be domestic violence or abuse; and, second, the evidential significance of certain supporting documentation, including relevant court orders, where an applicant is seeking to show that their relationship broke down as a result of domestic violence or abuse.

[39] As to the first of these, domestic violence and abuse are defined in the 'Definitions' section of the policy, in a manner consistent with the definition set out in the decision letter of 8 December 2020 and discussed at paragraph [36] above. The relevant portion of the guidance is in the following terms:

> "***Domestic violence and abuse***
>
> *Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. This can include, but is not limited to, the following types of abuse:*
>
> - *psychological*
> - *physical*
> - *sexual*
> - *financial*
> - *emotional*
>
> ***Other forms of abuse***
>
> *Controlling behaviour is a range of acts designed to make a person subordinate or dependent by:*
>
> - *isolating them from sources of support*
> - *exploiting their resources and capacities for personal gain*

- *depriving them of the means needed for independence, resistance and escape*
- *regulating their everyday behaviour*

Coercive behaviour is either:

- *an act or a pattern of acts of assault, threats, humiliation and intimidation*
- *other abuse that is used to harm, punish, or frighten their victim*

No distinction should be made between psychological (mental) abuse and physical abuse when assessing if a person has been the victim of domestic violence or abuse."

[40] In the section of the policy entitled 'Considering applications', it is noted that applicants must establish that the relationship with their partner was subsisting at the start of the last grant of leave to remain as a partner; that it broke down during the last period of leave; and that it broke down because of domestic violence. The policy then notes (correctly) that, "*The Immigration Rules do not specify any mandatory evidence or documents to be submitted with an application.*" It goes on to state that:

> "*All evidence submitted must be considered and a conclusion drawn as to whether there is sufficient evidence to demonstrate that, on the balance of probabilities, the breakdown of the relationship was as a result of domestic violence.*"

[41] Some factors to be taken into account when assessing the evidence are then noted in a non-exhaustive list. These include the timing of the application; the length of the relationship before the application is made; the applicant's previous immigration history (particularly where there is evidence of a number of previous attempts to secure leave to remain on different grounds); and the length of time since the alleged incident(s) of abuse or violence, along with the reasons given for any delay in submitting an application.

[42] There then follows a detailed table of evidence (from pages 22 to 29 of the policy document) which specifies types of evidence which may be produced by an applicant and factors which should be taken into account when considering whether the evidence produced meets the requirements for a grant of leave. It is again emphasised that the list of evidence contained within the table is not exhaustive (the words "*not indicative*" are used in the policy but it was common case at the hearing before me that this must be an error or misprint – since the table is plainly designed to be indicative – and that this should be read either as "*not exhaustive*" or "*indicative only*") and that "*all the evidence should be considered in the round.*"

[43] The table itself sets out the *type* of evidence which might be provided; the *value* which this evidence will generally be considered to have; and additional information which may be required in relation to it. For instance, a relevant criminal conviction which relates to domestic violence, or a police caution in relation to such an offence which is based on an admission of guilt, will generally be viewed as conclusive evidence that the domestic violence which is the subject of the conviction or caution occurred.

[44] For present purposes, the key entries within the table are those which relate to final orders in civil court cases; to statements from an independent witness; and to medical reports. For ease of presentation and reference, I have set these out below, along with the entries in relation to statements from the applicant or statements merely repeating their account, in what is a filleted version of the table for the purposes of these proceedings:

Type of evidence	**Value of evidence**	**Additional information required**
Final order in civil court – (for example non-molestation order or occupation order	**Conclusive** If a judge found that domestic violence occurred, this will have been on the balance of probabilities and can be accepted as definitive proof of domestic violence. **Strong** If there is no finding of fact recorded on the final order, a non-molestation order or occupation order should not be classed as conclusive proof has taken place [*sic*]. You must assess the order in conjunction with other evidence that has been submitted.	Decision makers should note that, although occupation orders made under the Family Law Act 1996 are specific to domestic violence cases, similar orders on the right to occupy a property can also be made in a number of other circumstances. You must therefore confirm that this is an occupation order made under the 1996 act [*sic*] and, if this is not the case, request other evidence of domestic violence.
Letter or statement from an independent witness	**Strong** – only to be considered as strong evidence if the witness has verified that: • they witnessed the incident of domestic violence first hand • have no vested interest in the case – for example, they are not related to the applicant	N/A
Ex parte orders (a decision made by a judge without requiring all the parties to be present) for	**Moderate** Ex parte orders are made by the court on the basis of perceived risk to the applicant. As both sides have not been heard, they	Ex parte orders are made on the evidence of one party only, although once the order is made, it can be challenged by the other party. If there is a follow up

example ex parte non molestation order or occupation order	are not conclusive proof that domestic violence has occurred.	hearing, decision makers must obtain the details of any further orders or undertakings. Other evidence, such as an assessment from a refuge or police reports, is needed to establish domestic violence conclusively.
Medical report from GP, or medical professional, employed by HM Armed Forces confirming injuries or condition consistent with domestic violence[**]	**Moderate**	The medical report should be provided by the GP who provided the consultation and give details of any hospital treatment needed.
Statement from applicant	**Weak** Further enquiries likely to be needed	Decision makers would expect to see further evidence such as police reports, refuge assessment and medical evidence.
Letter, statement, email, text or photos repeating applicant's account of domestic violence	**Weak** Limited value but must be considered in light of the rest of the evidence	Photos can be linked to any medical reports that may have been submitted.

[** I understand this entry to refer to a report from (i) a GP or (ii) a medical professional employed by the Armed Forces; that is to say, that the GP need not be employed by the Armed Forces, as the placement of the second comma might be thought to suggest.]

Discussion

[45] The applicant contends that the Home Secretary was irrational not to consider that she satisfied the requirements of the relevant provisions of the Immigration Rules (see paragraph [34] above); and/or that the Home Secretary's refusal decision shows that she failed to properly apply the balance of probabilities test to the evidence and/or failed to consider the evidence in the round (as required both by the policy and the guidance set out in *R (Waleed Suliman) v SSHD* [2020] EWHC 326).

[46] The submissions in this case have led me to discern two significant legal errors which in my view are sufficient to warrant the quashing of the impugned decisions:

(a) First, I accept the applicant's submission that the Home Secretary appears in a number of respects to have failed to grasp the true nature and significance in law of the evidence provided on her behalf. In particular, the respondent made an error of law in relation to the significance of the court orders provided by the applicant and failed to give those, and some other evidence relied upon by her, the weight which the relevant policy suggests they should have been afforded.

(b) Second, I accept the applicant's submission that the Home Secretary has fallen into error by dogmatically insisting that a claim based on domestic abuse must be corroborated by independent evidence.

[47] As to the first of these issues, the decision letter of 8 December 2020 is in particularly stark terms in saying that the applicant has "*failed to provide <u>any</u> supporting or corroborating evidence to substantiate your claim.*" The applicant submitted three strands of evidence which can, and in my view should, be considered to be "*supporting or corroborating evidence.*" The weight to be given to this evidence is, of course, a matter for the respondent (albeit that her discretion in this regard has been narrowed by the terms of her own policy in relation to the weight which will ordinarily be given to certain types of evidence). However, in making the assertion that the applicant had failed to provide *any* evidence of such a quality, the respondent has fallen into obvious error. Without determining that the only outcome rationally available to the respondent overall was a decision that the applicant had satisfied the test set out in the Immigration Rules, I am satisfied that the respondent has misdirected herself as to the nature of the evidence presented by the applicant in reaching the view highlighted above, namely that no supporting or corroborating evidence had been provided. This conclusion might variously be cast as irrational, as an error of material fact, as an error of law or (particularly in relation to the court documents) as a failure to adhere to the Secretary of State's own policy without explanation or good reason. The particular judicial review label which is applied does not matter a great deal. My reasons for these overall conclusions are set out in more detail below.

The court orders relied upon

[48] The primary evidence relied upon by the applicant were the orders of the court which were made in the course of her divorce proceedings. There is a plain error of law in the decision letter of 8 December 2020 in which it is said that "*there is no evidence within these documents <u>indicating</u> or demonstrating that the court has accepted <u>any</u> of your claims to be true*" [underlined emphasis added]. On the contrary, the decree nisi records that the judge had taken oral evidence from the petitioner in support of her petition and that he then gave judgment, holding that the applicant's husband *had* behaved in such a way that the petitioner could not reasonably be expected to live with him and that the marriage had broken down irretrievably (see the text of the order set out at paragraph [9] above). The "*claims*" referred to in the respondent's letter can only be the claims contained in the applicant's particulars of unreasonable behaviour set out in her divorce petition. As explained below, as a matter of law, the decree nisi plainly did indicate, and had to indicate, that at least some of these claims were accepted by the court to be true.

[49] It is important to consider the law in relation to divorce in Northern Ireland, which is set out in the Matrimonial Causes (Northern Ireland) Order 1978 ('the 1978 Order'), in determining the weight which ought to be accorded to an order of the type relied upon by the applicant in this case. The only ground for divorce, set out

in Article 3(1) of the 1978 Order, is that the marriage has broken down irretrievably. Significantly, pursuant to Article 3(2), the court hearing a petition for divorce "*shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts*", one of those facts being that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. Of further importance in the present context is the provision made by Article 3(3) of the 1978 Order, which is in the following terms:

> "*On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent, and, subject to paragraph (4), the court shall not grant a decree of divorce without considering the oral testimony of the petitioner*."

[50] The requirement for oral testimony from the petitioner can only be dispensed with for special reasons, which happens rarely in practice. Finally, by virtue of Article 3(5), it is only if the court is satisfied on the evidence of any such fact as is mentioned in Article 3(2) that it shall grant a decree of divorce (which it will do unless it is satisfied on all the evidence that the marriage has not broken down irretrievably or another limited exception applies).

[51] The effect of these provisions in the present case is that the High Court judge was required to hear oral evidence on oath or affirmation from the applicant. Before granting the decree nisi, he was also under a duty to inquire so far as he reasonably could into the facts alleged by the applicant. Crucially, given that the only fact upon which the applicant relied as evidencing the irretrievable breakdown of her marriage was that of unreasonable behaviour, the judge could also not grant the decree unless and until he was satisfied *both* that the marriage had broken down irretrievably *and* that the applicant's husband had behaved in such a way that the applicant could not reasonably be expected to live with him. Put shortly, the judge had to be satisfied that at least some of the particulars relied upon by the applicant (and set out at paragraph [7] above) had been proven. In light of these requirements, and when properly analysed, it was a clear error of law for the decision makers in this case (see paragraphs [20] and [26] above) to conclude that the orders made by the High Court did not indicate that the court had accepted any of the applicant's claims to be true. It is correct that the orders made by the High Court did not set out *which* of the applicant's particulars of unreasonable behaviour were accepted. In a case of this nature, that would not be expected. Indeed, the absence of any detail as to which particulars were accepted is highly likely to be an indicator that the court accepted all of the applicant's evidence. For the reasons given above, however, some of them must have been accepted as being true in order for the judge to make the order which he did.

[52] It is also clear that a number of the particulars of unreasonable behaviour relied upon by the applicant fall within the broad definition of domestic abuse set

out in the Home Office policy discussed above. For instance, the applicant contended that her husband had become aggressive, unruly and dismissive of her, and that he would slam doors and smash things throughout their home, to such an extent that she was afraid to leave her bedroom and that her life became intolerable in the environment of her matrimonial home. Given that the respondent's policy defines domestic violence and abuse as including "*any incident… of controlling, coercive or threatening behaviour*" or abuse between relevant parties, including psychological or emotional abuse, and where coercive behaviour includes an act or pattern of acts of intimidation or other abuse that is used to frighten the victim, it cannot plausibly be said that the order of the court made on the basis of the particulars of unreasonable behaviour advanced provides no evidence supporting or corroborating the applicant's claim. Mr Kennedy was of course right to submit that a marriage might be dissolved on the basis of unreasonable behaviour which falls well short of domestic violence or abuse, even applying the broad and modern definition which the respondent has adopted; but that is beside the point where the evidence on which the court proceeded in this case included matters which do, or at least could, amount to domestic violence or abuse within the terms of that definition.

[53] In the context of the Home Office policy on these matters, it is worth noting that the law on divorce in Northern Ireland is different in certain respects from the law on divorce in England and Wales (cf. section 1 of the Matrimonial Causes Act 1973). In particular, in England there is no general requirement such as there is in Northern Ireland that the petitioner give oral evidence before a judge. The requirement that the petitioner give evidence on oath before a judge is significant, since it allows the judge to consider and assess the petitioner's credibility and, if appropriate, to probe or question their evidence. Even where the evidence is not forcefully tested, it is of significance that it has been given on oath or affirmation (usually after legal advice and in any event on pain of prosecution for perjury if untruthful evidence is given); that the proceedings are *inter partes* proceedings, even if undefended, so that the opportunity for challenge exists if the alleged abuser takes issue with the particulars relied upon, as frequently occurs; and that the judge considering the evidence must be satisfied, after due inquiry, of the matters discussed above before granting a decree. The High Court is demonstrably independent and impartial and the mere fact that the evidence provided came from the petitioner herself does not undermine the basic point that an independent judicial officeholder had considered her evidence and assessed it as credible.

[54] Particularly in respect of this jurisdiction, therefore, it seems to me that there may be merit in the relevant Home Office policy being amended or supplemented to give caseworkers some assistance in relation to the weight which ought to be afforded to an order made in a divorce case where the allegations on which the petition is presented amount to domestic violence or abuse within the terms of that policy. Given that paragraph E-DVILR.1.3 of the Immigration Rules is dealing with permanent breakdown in relationships, one might expect at least some of those cases to end up in the divorce courts. For my part, it seems to have been somewhat of an oversight that court orders made in the course of divorce proceedings have not been

specifically addressed in the table of evidence set out in the Home Office policy and discussed at paragraphs [42]-[44] above. In light of this omission, there may be limited assistance to be gained from seeking to fit the court orders relied upon by the applicant into the framework of evidence which is discussed in the table. However, the applicant was entitled to expect that the decision makers would seek to do so and, in my view, so far as this exercise can be done, it is of further assistance to the applicant.

[55] Ms Connolly contended that the relevant entry in the table of evidence found within the respondent's guidance is that relating to a final order in a civil court. Although non-molestation orders and occupation orders are given as examples, that category of evidence is not limited to such orders. I accept that, in its current terms, this is where the court orders relied upon by the applicant fit best within the guidance. When dealing with such an order, it should ordinarily either be taken as conclusive evidence or at least strong evidence (if no finding of fact is recorded on the final order) that domestic violence or abuse has occurred. The applicant contends that the former of these was the appropriate approach to the orders on which she relied, which should have been viewed as conclusive evidence of the matters relied upon in her divorce petition. On the terms of the current policy, there is certainly support for that view for the reasons discussed above.

[56] I am mindful, however, that, firstly, the Home Secretary's guidance does not expressly deal with orders made in divorce proceedings where the petitioner relies on unreasonable behaviour; secondly, that the procedure in relation to divorce hearings in Northern Ireland is different from the law in England in the respect discussed above; thirdly, that the fact that this divorce petition was undefended is a consideration which the decision maker would be entitled to take into account in determining the weight to be given to the judge's acceptance of the applicant's evidence; and, fourthly, that it is always open to the decision maker to depart from the policy where they do so consciously and for a rational reason. In truth, it does not appear that the decision makers in this case made any effort to apply the relevant policy to the orders relied upon by the applicant, probably because they misread the policy as applying only to non-molestation orders or occupation orders, which are the only orders specifically mentioned in the relevant entry. I do not need to decide this issue since it is in any event clear that the complete dismissal of the corroborating or supportive effect of the court orders provided by the applicant cannot be sustained; but, insofar as necessary, I would also hold that the respondent has unlawfully failed to apply her own guidance to the facts before her.

[57] For completeness, I should add that I do not accept the applicant's submissions to the effect that the findings of the High Court in her divorce were absolutely conclusive and/or incontrovertible evidence of the matters which she had to establish before the respondent, or that the respondent is legally debarred from looking behind their *bona fides*. It will always be open for the respondent, in a particular case, to depart from her policy as to the weight which is normally accorded to a particular piece or category of evidence. If, for instance, later evidence

showed that a court had previously made a finding which was incorrect or which was based on untruthful evidence, the respondent could plainly take that into account. No such issue arises in the present case; but the mere fact that the High Court accepted the applicant's evidence does not mean that the respondent would be bound to do so also. In accordance with the present policy, it is something which ought to be given significant weight. As discussed above, however, where the respondent seeks to depart from the value which a particular piece or type of evidence is ascribed in her policy, this may be done, although it should be done consciously and with reasons (see, for instance, *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7, at paragraph [124]).

[58] I should perhaps also observe that the orders made in the applicant's divorce proceedings were not *ex parte* orders. The table of evidence in the respondent's guidance notes that an *ex parte* order is a decision made by a judge "*without requiring all the parties to be present.*" Strictly speaking, that is not correct. An *ex parte* order is one made without notice to the defendant or respondent. An on-notice hearing might proceed in the respondent's absence (as in this case) but it would not therefore be *ex parte*. Indeed, that is correctly described in a later part of the Home Office policy (at page 32) which treats *ex parte* as meaning "*without notice.*" In the present case, the applicant's husband was, as a matter of law, on notice of the proceedings as a result of the order of the Master deeming good service upon him of the applicant's petition for divorce. He had the opportunity to defend the proceedings but chose not to do so, which is another factor which ought properly to have been considered by the respondent in determining what weight to ascribe to the orders made by the High Court in the applicant's case.

The GP records

[59] I can deal more briefly with the further two strands of supporting evidence relied upon by the applicant. The evidence provided by her GP notes and records can also be viewed as corroborating evidence, since it provides contemporaneous and independent corroboration of the fact that shortly before she left the matrimonial property the applicant gave a history of breaking up with her husband, specifically mentioning his drinking; of her being stressed to the degree that medication was prescribed; and that, after having left him, she was more settled, having decided herself to move out and now being "*quite reconciled with the situation.*"

[60] Although the respondent was entitled to take into account that the doctor could not offer any first hand evidence of the alleged domestic abuse and was therefore relying on the history reported to him by the applicant, there are two matters of significance. First, the relevant entries in the GP notes provide evidence, from an independent source, that the applicant was making contemporaneous complaints about the stressful effect which her relationship with her husband was having upon her and that this lessened after she had taken the decision to leave him. This is therefore corroborative (both as to content and timing) of the case she made

to the respondent in her application for leave to remain; and there is nothing to suggest that her GP viewed this history as anything other than credible. Second, and significantly in my view, the GP considered her condition to be such as to warrant the prescription of medication, which provides some further corroboration that, at least, the stress which the applicant was under at that time was genuine.

[61] I emphasise again that the weight to be afforded to this evidence is ultimately for the respondent. It might rationally be thought to warrant little weight in all of the circumstances. However, the assertion that it is not supporting or corroborating evidence of any sort (implicit in the conclusion that the applicant had "*failed to provide any supporting or corroborating evidence*") is misguided. The respondent is correct to note that the doctor made no conclusion in relation to the applicant's claim to be a victim of domestic abuse. The applicant is right to say that that is not the doctor's function. In my view, however, the report to the doctor and his prescription of medication does clearly provide *some* corroboration of the applicant's account.

[62] Moreover, in light of the broad definition of domestic abuse in the respondent's policy and the acknowledgement that injury inflicted on domestic abuse victims may be psychiatric or psychological, it seems to me that the notes provided by the doctor in this case could properly be viewed as falling within the entry in the table of evidence contained in the respondent's policy relating to a "*medical report from GP… confirming… condition consistent with domestic violence.*" Generally, that should be viewed as evidence of 'moderate' value in accordance with the terms of the policy.

The additional witness statement

[63] Turning penultimately to the witness evidence provided by the applicant's friend, it is correct that this may be said to come from someone who is not completely impartial. However, no basis for impugning this witness's credibility or integrity has been identified, other than the mere fact of her association with the applicant. Her evidence directly corroborated the applicant's account that her husband shouted at her and made unreasonable demands of her, including late at night and early in the morning. It also provided evidence of the effect of this behaviour on the applicant, which the witness characterised as "*emotional abuse.*" Again, therefore, I consider it to have been a misdirection for the decision makers in this case to say that the applicant had failed to provide *any* supporting or corroborating evidence to support her claim. The witness's relationship to the applicant might be relevant to the weight which her evidence should be afforded; but she did provide a third party account, giving first hand evidence of what she had seen, which corroborated aspects of the applicant's claim. She did not merely repeat an account which had previously been given to her by the applicant. Her evidence went beyond that. Indeed, in the review decision there appears to have been an adjustment to the approach taken in relation to this witness statement. The initial decision indicated that it did not provide "*sufficiently acceptable or independently*

corroborative evidence in support of your claim"; whilst the review decision indicated that it was not "*on its own*" considered persuasive.

[64] Applying the guidance set out in the table of evidence contained in the Home Office policy, a letter or statement from an independent witness will be considered as strong evidence if they witnessed the incident of domestic violence at first hand (which, to a degree, the witness in this case did); and if they "*have no vested interest in the case – for example, they are not related to the applicant.*" The concept of a vested interest in the case is not defined but appears to be given a broad reach by the respondent. Here, the witness was not in any form of familial relationship with the applicant, although there was a friendship and work relationship. As I have noted above, it is perfectly permissible for this to be taken into account in assessing the weight to be provided to her evidence but, in my view, the characterisation of the witness's statement (as well as the other documentary evidence) in the initial decision as providing no corroboration to elements of the applicant's claim at all went beyond the approach legally open to the decision maker.

The requirement for completely independent corroboration

[65] I have already been critical of the sweeping assertion in the initial decision letter in this case that the applicant had "*failed to provide any supporting or corroborating evidence*" to substantiate her claim. That letter also noted that, "*Whilst the Immigration Rules do not specify which documents should be provided, the onus is on the applicant to provide <u>some evidence</u> to prove that, on the balance of probabilities, the relationship has been caused to break down due to domestic abuse"* [underlined emphasis added]. In the decision letter on the administrative review, as noted at paragraph [26] above, the writer also said this:

> "*After reviewing the evidence and the decision letter it is deemed that the original caseworker's decision is correct, the Immigration Rules require you to provide evidence which proves that your relationship was caused to break down permanently as a direct result of domestic abuse. Therefore, <u>any evidence which is not independent from your own testimony cannot prove that you are a victim of domestic abuse</u>.*"
> [underlined emphasis added]

[66] I also consider that this statement evinces an error of law. It is correct that the relevant text of the Immigration Rules requires that the applicant must provide evidence that their relationship with their partner broke down permanently as a result of domestic abuse. However, the respondent appears to have taken an unduly narrow approach to what can amount to such evidence. An applicant's own account and testimony is evidence. If credible, it could in itself satisfy the test in an appropriate case. The respondent is plainly entitled to take a sceptical view of self-serving evidence which is provided on an applicant's behalf, particularly where there are proper grounds for doubting an applicant's honesty and credibility.

However, insofar as the respondent has adopted an approach that every case requires corroborating evidence from a person other than, and independent from the applicant, I consider her to have erred in law. Such a requirement goes beyond the text of the Immigration Rules and would also represent an improper fettering of the respondent's discretion to accept an obviously credible first-hand account unsupported by other evidence. Indeed, in the case of domestic abuse characterised by coercive and controlling behaviour, where an applicant has been isolated from outside help by their partner, it may well be unsurprising if there is little which can be offered by way of independent corroboration or, at least, *wholly* independent corroboration. In many cases of domestic abuse, there is unlikely to have been an independent witness – or someone having the required degree of independence apparently sought by the respondent – who has seen the abuse occurring first-hand.

[67] I do not say that the respondent ought not to look for corroborating evidence where it is, or may reasonably be expected to be, available; nor that significant weight should not be afforded to such evidence; much less that applicants for leave to remain on the basis of having been the victims of domestic violence or abuse should not seek to support their application with as much evidence as possible, including from independent sources. However, as the facts of this case demonstrate, the mere fact that evidence is not wholly independent from a victim's (or alleged victim's) personal account does not deprive it of any evidential value whatever. To say that such evidence "*cannot prove*" that the applicant satisfies the requisite test – which I understand to mean cannot provide the necessary evidential support required by the Immigration Rules in conjunction with the applicant's own account and which is essentially of no evidential value – is in my view an error of law and a failure to apply the Home Office's own policy. The policy indicates that even a statement which simply *repeats* the applicant's account is of "*weak*" or "*limited*" value but nonetheless "*must be considered in light of the rest of the evidence*."

[69] In short, the decision makers' approach to the evidence in this case was to fall into the error identified by HHJ Thornton QC in *R (Balakoohi) v Secretary of State for the Home Department* [2012] EWHC 1439 (Admin) at paragraph [60] of applying "*an unduly mechanistic or strict consideration of the available evidence*" in this type of case. As he observed at paragraph [62] of his judgment:

> "*The overriding features of the guidance are that all the material available to a decision-maker should be evaluated and taken into account save in unusual circumstances and that the decision-maker's task is to weigh the credibility and reliability of all the evidence and not to discard any of it. Thus, although relevant material should wherever possible be independently supported or corroborated, none of it is ordinarily to be discarded altogether. This is particularly so if there is a good reason for the relevant evidence not being supported by independent corroborative evidence*."

[70] Although the Home Office policy has been updated since the *Balakoohi* case, I would generally endorse the approach to this type of case set out by Judge Thornton in paragraphs [34]-[35], [60]-[63] and [83] of his judgment, building on the guidance given by the English Court of Appeal in the *Ishtiaq* case (*AI (Pakistan) v Secretary of State for the Home Department* [2007] EWCA Civ 386). In particular, in the context of the present case I would re-emphasise the following points which I consider to be consistent with the guidance given in the *Balakooli* case:

(a) The purpose of the relevant provision of the Immigration Rules is to specify the test for the grant of leave to remain in a domestic violence or abuse case; it is not to set out precisely what evidence must be provided, much less to deny leave to applicants who can prove their case but cannot do so in a specific manner.

(b) All relevant evidence provided by an applicant should be carefully considered. Although the weight to be given to the evidence is a matter for the decision-maker, no evidence should be ruled out of account or automatically given no weight simply by virtue of its categorisation as 'non-independent.'

(c) The applicant's own evidence must obviously be considered and taken into account. Although lack of corroboration will be highly relevant in the overall assessment of the case, the decision-maker should inquire into and carefully consider whether the applicant has a good reason which explains the lack of corroborative or supporting evidence. It is wrong to proceed on the basis that independent evidence *must* be provided to establish a claim.

(d) When it comes to reports provided by family or friends, the focus should be on whether these provide additional evidence in support of the applicant's contentions (for instance, by first-hand testimony) or do no more than repeat reports provided by the applicant. Even in the latter case, the decision-maker should carefully consider whether the report being relayed is well-founded.

Conclusion

[71] For completeness, I should make clear that I reject the applicant's grounds based on procedural unfairness; failure to attach sufficient weight to various identified material factors; and failure to give reasons. The applicant had sufficient opportunity to make her case to the respondent. The legal errors in this case were in the respondent's assessment of the evidence. The respondent also provided detailed reasons. Although I consider there to have been public law failings in the decision-making, they are evidenced by the reasons given rather than consisting of a failure to give reasons. I have also sought to ensure that I do not stray into my own assessment of the weight to be ascribed to the evidence provided by the applicant in this case or of the outcome. That is a matter for the respondent, subject to irrationality, error of law, plain error of material fact and (in light of the terms of the

Home Office policy which deals with the weight to be afforded to certain evidence) breach of that policy. I consider that a number of those public law grounds have been established in this case; but have not sought, and do not seek, to dictate the weight which should be ascribed to the applicant's evidence when approached on the correct basis. I also do not consider that the applicant's reliance on Article 8 ECHR adds anything material to the other grounds advanced in this case.

[72] For the reasons given above and summarised at paragraph [46], I allow the application for judicial review and will make an order quashing both the initial decision made on behalf of the respondent of 8 December 2020 and the review decision of 12 January 2021. The applicant's application for leave to remain therefore now falls to be reconsidered by the respondent, in accordance with the judgment of the court.