Neutral Citation Number: [2025] EWCA Civ 24

Case No: CA-2023-002280

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
UT JUDGE BLUNDELL
Decision issued on 11 September 2023

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday 20 January 2025

Before :

LORD JUSTICE MALES
LORD JUSTICE ARNOLD
and
LORD JUSTICE SNOWDEN

- -

Between :

(1) RAJASEKHAR TAMMINA **(2) VINODA TAMMINA**	**Appellants**
- and –	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

The Appellants appeared in person
Michael Biggs (instructed by the **Government Legal Department**) for the **Respondent**

Hearing date : 5 November 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Snowden :

1. Although this appeal comes at the end of a long history of disputes over the immigration status of the Appellants, the sole issue on the appeal is a narrow one. It is whether the decision by the Respondent (the "SSHD") taken on 8 February 2018 to refuse the application by the First Appellant ("Mr. Tammina") for leave to remain in the UK as a Tier 2 (General) migrant was vitiated by procedural unfairness because the SSHD had not notified Mr. Tammina that his sponsoring employer's licence had been revoked some seven weeks earlier on 22 December 2017.

2. The Second Appellant, who is Mr. Tammina's wife, made a similar application for leave to remain as a dependent of her husband, and the parties have proceeded on the basis that her appeal stands or falls with his.

3. The issue requires consideration of the decision in R (Pathan) v SSHD [2020] UKSC 41 ("Pathan") in which the Supreme Court held that the SSHD had acted with procedural unfairness by failing promptly to notify a migrant who had applied for an extension of his leave to remain that his sponsor's licence had been revoked three months earlier.

4. For the reasons set out below, I consider that UT Judge Blundell was right to hold that the decision in Pathan is distinguishable on the facts, and that Mr. Tammina was not treated unfairly by the SSHD. The appeals must therefore be dismissed.

Background

5. Mr. Tammina originally came to the UK in October 2008 and was granted leave to remain, first as a Tier 4 general student and then as a Tier 1 post-study migrant until August 2014. On 9 May 2014 he was granted leave to remain as a Tier 2 (General) migrant to 31 March 2017. His sponsoring employer was Ratna Marble and Granites ("Ratna"). The Certificate of Sponsorship ("COS") issued by Ratna described Mr. Tammina's role as an Sales Accounts and Business Development Manager (Standard Occupational Code (SOC) 3545).

6. Mrs. Tammina came to the UK in October 2012 and was granted leave to remain as Mr. Tammina's dependent until 31 March 2017.

7. On 1 March 2017 Mr. Tammina applied for further leave to remain as a Tier 2 (General) migrant in order to continue to work at Ratna. His application was reliant upon a COS issued by Ratna.

8. While Mr. Tammina's application was outstanding, compliance officers from the SSHD visited Ratna's premises on 22 June 2017 to check its compliance with its sponsorship duties. In the course of that visit, Mr. Tammina was interviewed about his job. The handwritten notes of that interview, which Mr. Tammina signed, included a statement that whilst having leave to remain as a Tier 1 post-study migrant he had joined Ratna in 2013 as a junior salesman, but that when he applied for leave to remain as a Tier 2 (General) migrant he took on a new role within the company as sales accounts and business development manager. Mr. Tammina gave an account of the tasks that he performed in that role.

9. On 20 July 2017 the SSHD refused Mr. Tammina's application on the grounds that the SSHD had reasonable grounds to believe that the job that was described in his COS was not a "genuine vacancy" within the meaning of the Immigration Rules. The decision letter stated,

> "A recent compliance visit on 22 June 2017 determined that your position of Account Manager (Sales) is not a genuine one. In the interview with the Compliance Officer, you stated you had previously worked for the sponsor as a Junior Sales Assistant and that your role had not changed. The duties described to the officer were of a junior level and not what were described on your COS, which incidentally were copied word for word from the SOC wording."

10. On 3 August 2017 Mr. Tammina applied for an administrative review of that decision. He disputed that he had told the compliance officer on 22 June 2017 that his role had not changed, and he drew attention to the fact that the handwritten notes of the interview did not contain any such statement, which had only appeared in a later typed version. He also disputed the view that his role was not equivalent to that described in SOC 3545.

11. The administrative review concluded that the SSHD's original decision should be maintained. The reviewing officer did not resolve the issue of the apparent disparity between the handwritten version of the interview on 22 June 2017 and the later typed version, but took the view that the substance of the duties that Mr. Tammina had described were not what a Sales Accounts and Business Development Manager would be performing as described in SOC 3545.

12. That review decision was communicated to Mr. Tammina in a letter dated 30 August 2017 that required him to leave the UK and stated that while in the UK he could not work or access benefits. Mr. Tammina stated that the company's lawyers advised that this meant that he could no longer work for Ratna and he ceased to do so on 31 August 2017.

13. Mr. Tammina then brought proceedings for judicial review in the Upper Tribunal challenging the decision of 20 July 2017 on the basis that the decision was irrational or based upon an inaccurate premise given what had been recorded in the handwritten notes and the tasks that he was performing.

14. Whilst Mr. Tammina's application for judicial review was pending, on 20 October 2017 the SSHD notified Ratna that it was suspending its licence as a sponsor and was considering revoking the licence because of concerns that several of its employees (including Mr. Tammina) were not truly working in roles that corresponded to the job descriptions in their COSs issued by Ratna, and that Ratna had breached its duties as a sponsor. Ratna was given an opportunity to respond. Importantly, Mr. Tammina accepted before the Upper Tribunal that he was aware of the suspension of Ratna's licence and had discussed it with Ratna.

15. On 6 December 2017 Mr. Tammina and the SSHD compromised the judicial review proceedings. Their respective solicitors signed a consent order (the "Consent Order") that contained the following recital,

> "UPON the [SSHD] agreeing to withdraw her decision to refuse [Mr. Tammina's] application for leave to remain under the Tier 2 (General) Migrant scheme dated 20 July 2017 and the administrative review dated 30 August 2017 and to reconsider and to serve a new decision on [Mr. Tammina] in respect of that application within 3 calendar months of the status of his sponsor's licence having been resolved (absent exceptional circumstances)."

16. Although Mr. Tammina contended that this meant that the SSHD had given up her concerns about the genuineness of his position, that is clearly not the case. The Consent Order simply recited that his application would be reconsidered within three months of the status of Ratna's sponsorship licence being resolved. That made it clear that the SSHD had not yet formed a view on either matter.

17. In fact, two weeks later, on 22 December 2017, the SSHD determined to revoke Ratna's sponsorship licence on the basis that Ratna had provided false information about the true roles of Mr. Tammina and another employee. Ratna and the SSHD subsequently corresponded over that revocation, and the SSHD maintained her view that Ratna had not provided any plausible evidence that Mr. Tammina had been performing the duties listed in his COS, or that they met the minimum RQF Level 6 threshold for Tier 2 sponsorship.

18. Mr. Tammina was not, however, notified at the time that the SSHD had revoked Ratna's licence and neither was he a party to the subsequent correspondence between Ratna and the SSHD or aware of it.

19. The first that Mr. Tammina knew of the revocation of Ratna's licence was on 8 February 2018 when he received a letter from the SSHD notifying him that she had reconsidered his application of 1 March 2017 and had refused it. The letter simply stated that Mr. Tammina could not be awarded any points for sponsorship or salary because he had not provided a valid COS reference number because the reference number for the COS provided by Ratna had been cancelled.

20. Mr. Tammina applied for an administrative review of that decision, but that was refused on 15 March 2018.

21. Thereafter, Mr. Tammina unsuccessfully applied for leave to remain on the grounds of 10 years' accrued residence in the UK. When that was finally refused, he applied for leave to remain on human rights grounds based upon Mrs. Tammina's medical conditions. That application was also refused in 2021, and was unsuccessfully appealed to the First Tier Tribunal.

The Upper Tribunal decision

22. The Upper Tribunal also rejected all but one grounds of appeal advanced by Mr. Tammina. However, on 7 July 2023 UT Judge Blundell set aside the FTT's decision because it had not considered an argument made by Mr. Tammina that he had suffered "historical injustice"[1] due to the failure of the SSHD to notify him that Ratna's

1. See Patel (India) [2020] UKUT 351 (IAC) and Ahmed (Bangladesh) [2023] UKUT 165 (IAC).

sponsorship licence had been revoked before she finally reconsidered and refused his application on 8 February 2018. UT Blundell determined to retain the other factual findings of the FTT and to admit further evidence, rehear argument and decide the "historical injustice" point on the appeal.

23. In a judgment promulgated on 11 September 2023, UT Blundell dismissed the historic injustice arguments and hence the appeals.

24. The relevant part of the UT's decision against which Mr. Tammina was given permission to appeal relates to his argument that his case was indistinguishable from Pathan. I shall return to the facts of Pathan below, but for present purposes it suffices to say that UT Judge Blundell held that three features distinguished Mr. Tammina's case from Pathan. He explained those reasons at [42]-[46],

> "[42]. Firstly, Mr. Pathan was unaware of there being any difficulties with his sponsor's licence and he only came to learn that the licence had been revoked when his application for leave to remain was refused three months later. In this case, [Mr. Tammina] had prior knowledge of the difficulties. He was interviewed during the compliance visit and he was aware that the sponsor's licence had been suspended following the compliance visit. He evidently knew the reason for that suspension because of the respondent's first decision in his case. He confirmed before me that he discussed the suspension with his employer.
>
> 43. [Mr. Tammina] stated, and I accept, that he left his employment with Ratna on 31 August 2017. It is understandable that the company felt unable to employ him from that point onwards, given the terms of the Administrative Review decision. He also stated, and I accept, that Ratna did not tell him that its licence had been finally revoked in December 2017. That assertion is supported by the recent email exchange between the second appellant and a man identified only as Richard within Ratna. But the fact that [Mr. Tammina] was not told of the revocation does not place him in the same boat as Mr. Pathan. He was well aware of the difficulties six months or so before the revocation decision. He had discussed those difficulties with his employer and he knew that his Tier 2 application was to be reconsidered after Ratna's licence was resolved one way or the other.
>
> 44. Secondly, because of [Mr. Tammina's] prior knowledge of the situation with his sponsor, he had an opportunity to take steps to address his predicament before the final decision on his Tier 2 application. I appreciate that his employment relationship with Ratna had come to an end in August 2017 but it was open to him to remain in touch with the company so that he would know whether its sponsor licence had been revoked.

> 45. Mr. Melvin [for the SSHD] was obviously wrong in his submission that [the] solicitors who acted for [Mr. Tammina] and [Ratna], would simply have told [Mr. Tammina] about the company's affairs; a solicitor would never disclose commercially sensitive information about one client to another. But that is immaterial here; there is no suggestion that [Mr. Tammina] had fallen out with the company and there was every reason for him to remain in touch with them, given the jeopardy into which his Tier 2 application would be thrown in the event that the licence was revoked. Mr. Pathan, on the other hand, had no way of knowing about the difficulties with his sponsor's licence, whereas [Mr. Tammina] could have kept in contact with Ratna. Had he done so, he could have taken steps to address his position between the revocation of the licence in December and the decision on his Tier 2 application in February. I note that this period equates to sixty days or so.
>
> 46. Thirdly, and as Mr Melvin submitted, [Mr. Tammina's] case is distinguishable from Pathan's because the revocation in the latter case had 'nothing whatever' to do with Mr. Pathan: [107] of Lord Kerr and Lady Black's joint judgment refers. In [Mr. Tammina's] case, the respondent's concerns about his employment at Ratna were clearly to the fore in the decision to revoke the licence and it is fallacious, as I have explained above, to suggest that those concerns had evaporated in the face of [Mr. Tammina's] application for judicial review. [Mr. Tammina's] complicity in the reasons for the revocation serves not only to distinguish the case from Pathan; it also means that [the SSHD] had no obligation under her policy to notify [Mr. Tammina] of the revocation or to allow him sixty days' grace in which to address his situation."

The approach to the appeal

25. Before turning to consider Pathan, I should deal with a preliminary argument made by Mr. Biggs for the SSHD as to the approach this court should adopt to an appeal against a decision on procedural fairness. Mr. Biggs contended that the requirements of procedural fairness are highly dependent upon context and call for an evaluative assessment by the tribunal on the facts of the case. He submitted that this meant that an appellate court should be slow to interfere with the evaluative assessment of the specialist tribunal judge unless the decision was one that no reasonable judge could have come to.

26. It is quite true that the particular requirements of procedural fairness are not fixed or the same in every type of case. They depend upon the context of the statutory scheme in question and must be assessed by reference to the facts of an individual case. That appears from the well-known dicta of Lord Mustill in R v SSHD, ex parte Doody [1994] 1 AC 531 at [55], where Lord Mustill derived the following propositions from the authorities,

> "(1) [W]here an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances.
>
> (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type.
>
> (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.
>
> (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken…"

27. However, it does not follow that the decision by a tribunal whether an administrative power has been exercised by an authority in a procedurally unfair manner in a particular case is a form of discretionary decision with which an appellate court should not interfere unless it is irrational or outside a range of reasonable outcomes. Whether the procedure that has been followed by an administrative authority was fair or unfair is a hard-edged question of law, and the question for an appellate court is simply whether the decision of the tribunal in this respect was right or wrong.

Pathan

28. The facts of Pathan were summarised by Lord Kerr and Lady Black at [94]-[96],

> "94. Mr. Pathan was granted leave to enter the United Kingdom as the dependant partner of a Tier 4 (general) student on 7 September 2009 with leave to remain until 31 December 2012 (later extended until 30 April 2014). Before the latter date arrived, Mr. Pathan applied for and was granted leave to remain as a Tier 2 (general) migrant from 23 March 2013 until 15 October 2015. This was so that he could be employed by a company known as Submania Ltd as a business development manager. The period between March 2013 and October 2015 is known as the period of leave.
>
> 95. Before the period of leave was due to expire in October 2015, Mr. Pathan applied, on 2 September 2015, for further leave to remain in order to continue to work for Submania in the same capacity as before. The application was made on the basis that he would retain his Tier 2 status. It was made within the time allowed and it was in correct form. His wife and child were named as dependants in the application. It was supported by a certificate of sponsorship (CoS) issued by Submania.

> 96. Mr. Pathan's application was put on hold while a Sponsor Compliance Team of the Home Office investigated Submania. As a result of their investigations, Submania's sponsor licence was suspended on 4 February 2016. The licence was subsequently revoked on 7 March 2016. This had the automatic effect of invalidating Mr. Pathan's CoS. Although, as seen below in para 101, his leave was automatically extended until the Secretary of State considered his individual case, he had no opportunity to take steps to deal with the impending, inevitable determination of his application. Mr. Pathan was not informed of the revocation until 7 June 2016. He was therefore unaware of the impact that the decision would have on his status until three months after it had been taken."

29. At [99], Lord Kerr and Lady Black noted that Mr. Pathan's primary case was that procedural fairness required that he should have been given notice by the SSHD of the revocation of his sponsor's licence when that occurred. They explained at [101] that the effect of section 3C of the Immigration Act 1971 is that if a person has made an in-time application for a variation of their leave to remain, their leave to remain will automatically be extended whilst the application is being considered, and whilst they are exercising rights to seek an administrative review or rights of appeal.

30. At [100] and [102]-[103], Lord Kerr and Lady Black explained what Mr. Pathan could have done if he had been notified of the revocation of his sponsor's licence, and why he was prejudiced by the failure of the SSHD to notify him of that revocation,

> "100. If Mr. Pathan had been given notice of the revocation of his sponsor's licence, a number of options would have opened for him: (i) he could have sought to vary his leave application, other than by making a human rights or asylum claim (e.g. by making an application relying on a new CoS from a different employer); (ii) he could have made an application to vary the terms on which he was entitled to remain so as to rely on human rights grounds; (iii) he could have made practical plans to remove himself, his wife and his child from the United Kingdom to his native India, thereby avoiding the prospect of their becoming overstayers, with all the negative consequences which that entailed; and (iv) he could have decided to take no steps until formally notified by the Secretary of State that his leave to remain was refused.
>
> …
>
> 102. None of these options was realistically open to Mr. Pathan because the first he knew of the problem with his application was when he received the Secretary of State's letter of 7 June 2016 refusing it. Before this was communicated to him, Mr. Pathan had no occasion to seek leave to remain other than on foot of what he believed was a valid CoS. Although his leave had been extended (by operation of section 3C) while the Secretary of

> State considered his application, because he was unaware of the virtually certain outcome of that consideration, Mr. Pathan took no steps to deal with that inevitability. Why would he? He simply did not know what lay ahead. But what unavoidably lay ahead, while his application for leave to remain depended on a CoS which was of no value, was the end of his leave to remain, as from the conclusion of the administrative review period following refusal of his application.
>
> 103. If he had known that this was inevitable, Mr. Pathan could have applied to vary the application. Even if the variation constituted a significant departure from the original application, it is recognised as a "variation" for the purposes of section 3C of the 1971 Act, so long as the original application for leave had not been determined…"

31. Lord Kerr and Lady Black then concluded that the failure by the SSHD to inform Mr. Pathan promptly of the revocation of his sponsor's licence was procedurally unfair to him because it deprived him of the opportunity to take any of the steps that they had identified. They stated, at [107],

> "107. Underpinning the duty to act fairly in this context is the notion that a person such as Mr. Pathan should be afforded as much opportunity as reasonably possible to accommodate and deal with a decision which potentially has devastating consequences. One only has to envisage how Mr. Pathan must have reacted to the news that his Tier 2 application had been rejected because of the revocation of Submania's licence, to understand the fundamental justice in giving him the chance to do something about it. He had every reason to believe that his application would succeed. The reason that it did not had nothing whatever to do with him. But, failure in the application represented a calamitous upheaval for him and his family. To ensure in those circumstances that he had timely notice that, for wholly unanticipated reason his application was bound to fail, so that he could seek to avoid its consequences seems to us to be a self-evident aspect of the duty to act fairly."

32. Lord Kerr and Lady Black stated their conclusion at [136],

> "136. We have concluded, therefore, that the failure to inform Mr. Pathan promptly of the revocation of Submania's licence constituted procedural unfairness. It is not a species of the audi alteram partem rule in the classic meaning of that rubric. This was not a case of the Home Office making sure that Mr. Pathan had a chance to make representations to it about the correctness of its decision to reject his application as originally formulated. Rather, it is an instance of his being deprived of the enlarged period that timeous information would have provided, during which he might have been able to vary his existing application so as to put it into a form that could succeed. There is, however,

> no material difference between these two situations. Furthermore, in principle, it can be just as unfair, procedurally, to restrict a person's opportunity to take steps to avoid the effect of the decision as it would be to deny him the opportunity to make representations. The objective of the person affected is the same in both scenarios. It is to avoid the adverse consequences of an unfavourable decision."

33. Two of the other members of the Supreme Court, Lady Arden and Lord Wilson, each agreed with the decision that the SSHD had a duty to give Mr. Pathan prompt notification of revocation of Submania's licence and had failed to do so. Lady Arden explained her decision in this respect at [56],

> "56. Here what procedural fairness aims to achieve is that a person who, like Mr. Pathan, is applying for further leave in order to continue working for his sponsor, and had a valid CoS at the date of his application, should have notice of the communication to the sponsor of the determination of the Secretary of State that the sponsor's licence is revoked. Where the Secretary of State has initiated the process for the revocation of the sponsor's licence, and revocation is the cause of the invalidation of his application, it is right that the applicant should have that information in order to avert or mitigate the potential fatal blow to his application. This is because, while the applicant can be under no illusion as to the effect of revocation, he is not told in terms that the Secretary of State will take this course without his being informed."

34. Lady Arden also gave a number of examples of situations in which, in her view, no duty of prompt notification would arise. For present purposes the relevant one was at [66],

> "66. There will be other cases where fairness does not require the applicant to be informed: obvious examples are where he already knows that there are grounds for revocation and where he is complicit in them. In those circumstances, he already knows that the success of his application is in jeopardy…"

35. Lady Arden and Lord Wilson also thought that procedural fairness meant that the SSHD had a further duty not to determine Mr. Pathan's application until a further reasonable period of time had elapsed following notification of the revocation of his sponsor's licence. However, that further duty was not accepted either by Lord Kerr and Lady Black, or by Lord Briggs (who dissented).

Analysis

36. Having considered at some length the decision in Pathan, I turn to the decision of the UT in the instant case. In my judgment, UT Blundell was right to conclude that Pathan was distinguishable on the facts and that in the instant case there was no duty upon the SSHD promptly to notify Mr. Tammina that Ratna's licence had been revoked.

37. As set out above, UT Judge Blundell gave three reasons for his conclusion. The first, and most significant, was that Mr. Tammina was aware from an early stage that there were difficulties with Ratna's sponsor's licence. Specifically, UT Judge Blundell found at [42] that Mr. Tammina knew that Ratna's licence had been suspended following the compliance visit and that he had discussed the suspension with Ratna. Mr. Tammina also plainly knew that a decision on whether Ratna's licence would be continued or revoked was still outstanding on 6 December 2017 when he agreed the Consent Order.

38. It was also inherent in the terms of the Consent Order that the decision of the SSHD on the continuation or revocation of Ratna's licence was relevant to the decision on Mr. Tammina's application, because the Consent Order gave the SSHD a limited period within which to determine Mr. Tammina's application following a decision on Ratna's licence. If the two were unconnected, then there was no reason for this arrangement.

39. It follows that Mr. Tammina must have been aware for a number of months in late 2017 that the status of the COS from Ratna upon which his application depended was in doubt.

40. As UT Judge Blundell held, that situation contrasts with the facts of Pathan. Although there is no clear statement to this effect in any of the judgments, putting the pieces together, it is apparent that Mr. Pathan was not aware that his sponsor's licence had even been suspended, still less revoked. As Mr. Biggs (who appeared for Mr. Pathan in the Supreme Court) told us, the news that his sponsor's licence had been revoked came "out of the blue".

41. That factual feature of Pathan can be deduced from the statement by Lord Keer and Lady Black at [102] "because he was unaware of the virtually certain outcome of that consideration, Mr. Pathan took no steps to deal with that inevitability. Why would he? He simply did not know what lay ahead": and from their statements at [107] that Mr. Pathan "had every reason to believe that his application would succeed. The reason that it did not had nothing whatever to do with him", and that fairness required that he should have "timely notice that, for [a] wholly unanticipated reason his application was bound to fail".

42. I also consider that the same point can be deduced from Lady Arden's statement at [66] that in contrast to her conclusion in the case, no duty of notification would arise if an applicant "already knows that there are grounds for revocation and where he is complicit in them. In those circumstances, he already knows that the success of his application is in jeopardy". Lady Arden could not have drawn that contrast in those terms if there had been any suggestion that Mr. Pathan had such knowledge.

43. UT Judge Blundell's second reason for distinguishing Pathan from the instant case follows on from this first reason. He picked up the point that the Supreme Court held that the reason that a failure to give prompt notification of revocation of his sponsor's

licence was procedurally unfair to Mr. Pathan was because it deprived him of the opportunity to take steps to mitigate or avoid the consequences that such revocation would inevitably have for his application.

44. In contrast, UT Judge Blundell held that Mr. Tammina's knowledge that there were problems over Ratna's licence meant that he had an opportunity to keep in touch with Ratna and to take steps to address his predicament before the final decision on his application. UT Judge Blundell also thought that if Mr. Tammina had done so, he would have found out when it lost its licence on 22 December 2017, and so would have had about 60 days to do something before the decision on his own application on 8 February 2018.

45. Mr. Tammina took issue with this reasoning, maintaining that he had been forced to stop working for Ratna on 31 August 2017 as a result of the terms of the letter notifying him of the outcome of the administrative review, that this meant that he was unable to take any practical steps with Ratna or any alternative employer thereafter, and there was no express finding that Ratna would have told him of the revocation of its licence. Mr. Tammina also pointed out that even if he had learned of the revocation on 22 December 2017, UT Judge Blundell was wrong to think that this would have given him 60 days to find a solution before the decision was taken on his own application on 8 February 2018. In fact it gave him about seven weeks (including the holiday period).

46. I broadly agree with UT Judge Blundell and I do not accept Mr. Tammina's submissions. It is true that when Mr. Tammina was forced to stop working for Ratna at the end of August 2017, Ratna's licence had not been suspended. The only issue at that time related to the SSHD's determination that Mr. Tammina's job did not match the description in the COS, which Mr. Tammina then challenged by judicial review. But even if conducting that judicial review would not necessarily have caused Mr. Tammina to keep in touch with Ratna and informed about the status of Ratna's licence, the fact is that he did keep in touch and informed. UT Judge Blundell found at [42] that Mr. Tammina was aware that Ratna's licence had been suspended on 20 October 2017 and had discussed that with Ratna.

47. In any event, Mr. Tammina was plainly aware that there was a threat to the continuation of Ratna's licence by 6 December 2017 when the Consent Order was agreed. I agree with UT Judge Blundell that there is nothing to suggest that Mr. Tammina was unable to keep in touch with Ratna thereafter. Indeed, if Mr. Tammina thought that he and Ratna would be vindicated, it was important that he should do so in order to ascertain whether his job was still available to him.

48. Moreover, because it was recorded in the Consent Order that the SSHD had withdrawn both her earlier decision of 20 July 2017 and the administrative review decision of 30 August 2017, there was nothing after 6 December 2017 to prevent Mr. Tammina maintaining contact with Ratna to see if he could continue to work for it, or to prevent him from taking any other steps to protect his position independently of Ratna – e.g. by seeking an offer of employment with a new sponsor whose licence was not in doubt and varying his application for leave to remain if he received such an offer.

49. The third reason that UT Blundell gave for distinguishing Pathan was that the SSHD's concerns about Mr. Tammina's employment at Ratna were "clearly to the fore in the

decision to revoke [Ratna's] licence", and Mr. Tammina was "complicit" in the reasons for the revocation of Ratna's licence.

50. I accept that the issue of whether Mr. Tammina's role at Ratna matched his COS was common both to the decision to refuse his application and to the decision to suspend and revoke Ratna's licence, and that this is a distinguishing feature from the facts of Pathan. I also consider that the fact that there was such a connection supports the second reason given by UT Judge Blundell that there was every reason for Mr. Tammina to keep in touch with Ratna in order to keep himself informed about whether any decision had been taken on the continuation of its licence.

51. But I do not agree with UT Judge Blundell's assessment that Mr. Tammina's "complicity" in the reasons for the revocation of Ratna's licence was a (third) reason for the SSHD not to have any duty to notify him promptly of the revocation.

52. The word "complicit" was used by Lady Arden in her judgment in Pathan at [66], where she gave as an example of a case in which the duty to notify would not arise a situation in which the applicant "already knows that there are grounds for revocation and where he is complicit in them".

53. The word "complicit" generally connotes a situation in which the person in question is knowingly involved in wrongdoing with another. A sponsor's licence may certainly be revoked if an employer knowingly or recklessly provides false information about the true role of a sponsored employee. However, the grounds upon which a licence will or may be revoked (as set out in Appendices 5 and 6 to the applicable Home Office Guidance for Sponsors) do not necessarily require conscious wrongdoing by a sponsor. Still less is a finding of conscious wrongdoing on the part of an applicant required before an application for leave to remain can be refused. The application can, for example, be refused based upon an evaluation of the skill levels required to perform the relevant duties and/or whether there is a "genuine vacancy" (as defined in the Immigration Rules) for the role stated on the COS.

54. In my judgment, given what is implicit in a finding that an applicant has been "complicit" in the grounds for revocation of a sponsor's licence, such a finding should not be made without it being clear what is actually being said. If an allegation of conscious wrongdoing is being made, then it should be made explicitly, and the applicant should be given a fair opportunity to deal with it. In the instant case, I do not understand that any allegation of conscious wrongdoing was ever put squarely to Mr. Tammina, there was no factual finding as to Mr. Tammina's state of mind in the FTT's decision, and UT Judge Blundell also made no such finding of fact that was capable of supporting a view that Mr. Tammina was knowingly party to any attempt by Ratna to mislead the SSHD about the true nature of his role with the company.

55. Although I therefore do not think that UT Judge Blundell was justified in his finding that Mr. Tammina was complicit in the matters giving rise to the revocation of Ratna's licence, I do not think that it affects the result. As I have explained, the first two reasons that UT Judge Blundell gave were sufficient to support the conclusion that he reached that on the facts of this case, the SSHD had no duty to give prompt notice to Mr. Tammina of her decision to revoke Ratna's licence, and that it was not procedurally unfair to Mr. Tammina that no such notice was given.

Disposal

56. I would therefore dismiss the appeals of Mr. and Mrs. Tammina.

Lord Justice Arnold:

57. I agree.

Lord Justice Males:

58. I also agree.