



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/06056/2018
IA/00076/2018
IA/00104/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 18 June 2019**

**Decision & Reasons Promulgated
On 21 June 2019**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SHERSHAH [S] & OTHERS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M. Biggs, instructed by Eldons Berkley Solicitors

For the respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant ("the appellant") appealed the respondent's decision dated 07 April 2018 to refuse a human rights claim. First-tier Tribunal Judge Raymond ("the judge") dismissed the appeal in a decision promulgated on 01 March 2019.

2. Rule 40 of The Tribunal Procedure (Upper Tribunal) Rules 2008 allows the Upper Tribunal to give a decision orally at a hearing. Rule 40(3) states that the Upper Tribunal must provide written reasons with a decision notice to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings. Rule 40(3) provides exceptions to the rule if the decision is made with the consent of the parties or the parties have consented to the Upper Tribunal not giving written reasons. In this case both parties consented to the decision at the hearing so it is not necessary to give detailed reasons.
3. In summary, it was argued on behalf of the appellant that, despite the length of the decision, the judge failed to follow the general guidance outlined in *R (Khan) v SSHD (Dishonesty; tax returns; paragraph 322(5))* [2018] UKUT 384. Although it was accepted that the decision pre-dated the recent Court of Appeal decision in *Balajigari v SSHD* [2019] EWCA Civ 673 it was further submitted that the judge's approach did not accord with the general comments made in that case. The judge failed to follow a structured approach to the relevant burden and standard of proof in a case involving a serious allegation of deception. The judge made various mistakes of fact and/or perverse findings, which cumulatively called into question the anxious scrutiny given to the assessment. The most notable being the judge's repeated reference to Mr J. Gajjar as a person involved in the scenarios outlined in the evidence when, in fact, he was counsel for the appellant at the hearing. While none of those points might have been sufficient, taken alone, when taken together, they rendered the decision unsustainable. It was also argued that the judge failed to consider material matters and failed to give adequate reasons to explain some of his findings. Mr Tufan accepted that several points had merit and that the decision was not sustainable. I agreed for the reasons outlined by Mr Biggs in his submissions and made an oral decision accordingly.
4. The First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside and both parties agreed that the appeal should be remitted to the First-tier Tribunal for a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 18 June 2019
Upper Tribunal Judge Canavan