



Upper Tribunal
(Immigration and Asylum Chamber)

PA/10123/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 5 July 2019

Decision & Reasons Promulgated
On 12 July 2019

Before

Mr C M G OCKELTON, VICE PRESIDENT
& UT JUDGE MACLEMAN

Between

HAMZA [Y]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by McGlashan MacKay,
Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Gillespie, promulgated on 26 November 2018.
2. The grounds are firstly directed against paragraphs 48 and 57 of the decision, where the judge declined to accept the appellants' account of their travel history and of the loss of their passports.

3. That line was not taken in the respondent's decision, so the appellants had not been on notice that those assertions might be in issue.
4. Since the hearing in the FtT, the appellants have tendered evidence to support their claims about their travel history, and to show that a report was made to the police at the claimed time about the loss of their passports.
5. Procedural unfairness is established. We are satisfied that the error was capable of making a material difference to the outcome. The judge gave other reasons, but this aspect is mentioned at the beginning and again at the end of his consideration, in which it evidently played a significant part. We cannot say that on excising this error, the outcome must have been the same.
6. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing.
7. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Gillespie.
8. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

9 July 2019
UT Judge Macleman