



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

Appeal Number: HU/09306/2019 (P)

**THE IMMIGRATION ACTS**

**On the papers on 15 June 2020**

**Decision & Reason Promulgated  
On 24 June 2020**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MUHAMMAD USMAN MASOOD  
(Anonymity direction not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**ERROR OF LAW FINDING AND REASONS**

1. On 2 September 2019 First-Tier Tribunal Judge Myers dismissed the appellant's appeal.
2. Permission to appeal was sought by the appellant and granted by a judge of the Upper Tribunal, on a renewed application, on the basis that it was arguable on balance that the judge's decision is inconsistent with the guidance in Balajigiri [2019] EWCA Civ 673 and as a consequence arguably flawed by an error or errors of law as stated in the appellants grounds.
3. In light of the Covid-19 pandemic an Initial Hearing listed for 5 May 2020 at Manchester was vacated and directions sent to the parties indicating the Upper Tribunal was of the view that the question of whether the Judge had erred in law in a manner to the decision to

dismiss the appeal could be assessed on the papers without a hearing. Submissions were invited from the parties upon this proposed course of action.

4. On 11 May 2020 a letter was received from a Senior Home Office Presenting Officer the relevant part of which is in the following terms:
  - ii. The respondent does not oppose the appellant's application for permission to appeal in line with the grant of permission by Judge Allen.
  - iii. In addition, from paragraph 16 of the determination the findings are inconsistent with regards to the appellant's conduct against the evidence that was provided.
  - iv. The Tribunal are invited to determine the appeal with a fresh oral hearing at the FTT.

### **Error of law**

5. This is a case in which an issue arose concerning an earnings discrepancy between figures declared to HMRC and in previous applications for leave to remain. The Judge set out findings of fact from [14].
6. The sole ground of refusal of the appellant's application was that pursuant to paragraph 322(5).
7. The appellants grounds of appeal identified issues such as the Judge at [16] stating the appellant's evidence lacked coherence yet in explaining these concerns finding the appellant had given a consistent explanation. No reasons are given by the Judge as to why the evidence might have lacked coherence.
8. It is also said the Judge failed to consider the recent decision of the Court of Appeal in Balajigiri for which permission was granted.
9. In light of the acceptance by the Secretary of State of the errors in the decision as outlined in the grant of permission to appeal and grounds seeking permission to appeal, which totally undermine the basis of the decision, I find the Judge has erred in law in a manner material to the decision to dismiss the appeal and set the Judge's decision aside.
10. The failure to give proper regard of the guidance of the Court of Appeal and lack of adequate reasoning means this decision will have to be considered afresh by a judge other than Judge Myers. I remit the appeal to the First-tier Tribunal sitting at Bradford for this purpose. There are no preserved findings.

### **Decision**

11. **The First-tier Judge materially erred in law. I set aside the decision of the original Judge. This appeal is remitted to the First-tier Tribunal sitting at Bradford to be heard afresh by a judge other than Judge Myers.**

Anonymity.

12. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 15 June 2020