



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/04607/2018**

Appeal Numbers:

HU/09797/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd April 2019**

**Decision & Reasons
Promulgated
On 24th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR SYED MUHAMMAD IMRAN ABBAS
MRS MEHWISH BUKHARI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Pipe of Counsel
For the Respondent: Mr Cunha, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants born on 2nd July 1985 and 12th November 1983 respectively are both citizens of Pakistan. The Appellants were represented by Mr Pipe of Counsel. The Respondent was represented by Mr Cunha a Presenting Officer.

Substantive Issues under Appeal

2. The Appellants have made application for leave to remain in the UK on the basis of Article 8 of the ECHR and their appeals were refused by the Respondent on 30th January 2018 and 7th April 2018 respectively. The Appellants had appealed that decision and their appeals had been heard together at Birmingham on 23rd November 2018 before Judge of the First-tier Tribunal Fox. The judge had dismissed their appeal.
3. Application for permission to appeal had been made and such application had been granted by the First-tier Tribunal on 5th February 2019. It was said the decision arguably did not properly address the shifting burden and standard of proof in these types of cases and arguably failed to address certain relevant material evidence. Directions were issued for the Upper Tribunal firstly to decide whether a material error of law had been made or not and the matter came before me in accordance with those directions.

Decision

4. Following submissions made by Mr Pipe of Counsel on behalf of the Appellants it was properly conceded by the Presenting Officer that a material error of law had been made by the First-tier Tribunal Judge in this case.
5. That material error was essentially a combination of two factors. Firstly there was a less than clear or accurate approach to the burden and standard of proof in these types of cases where such a burden and standard operates in what has been described as a boomerang manner. Secondly there were some not insignificant factual errors or findings that form part of the assessment of the Appellants' explanation such that those errors contributed towards the adverse credibility findings made by the judge in respect of the Appellants' explanation. It is possible that some or all of those adverse findings may not have been made if the errors had themselves not been made or identified. That may have affected the overall conclusion reached by the judge in this case.
6. Accordingly by agreement it was found that a material error of law was made such that a fresh decision needed to be made in the First-tier Tribunal.

Notice of Decision

7. A material error of law was made by the judge in the First-tier Tribunal such that the decision of the First-tier Tribunal needs to be set aside and the matter remitted back to the First-tier Tribunal for a fresh decision.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Lever

Date



