



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

Appeals: PA/ 03596/2019
PA/ 03599/2019

THE IMMIGRATION ACTS

Heard at Edinburgh
On 20 February 2020

Decision & Reasons Promulgated
On 16 March 2020

Before

UT JUDGE MACLEMAN

Between

**BERVIAN [A]
&
KHALID [I]**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors
For the Respondent: Mr M Clark, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Handley dismissed the appellant's appeal by a decision promulgated on 16 September 2019. The FtT refused permission to appeal. The appellant sought permission from the UT on 7 grounds, set out in an application dated 13 November 2019.
2. On 3 December 2019 UTJ Allen granted permission on grounds 1, 4, 5 and 6 only, observing also that if 6 was to be maintained, "witness statements will be needed ... to support the contention" that the decision at [32] and [34] did not reflect the evidence given by the appellants at the hearing.
3. Ms Loughran tendered statements by the appellants and a copy of her record of proceedings in the FtT. Having referred also to the respondent's record, Mr Clark accepted that the judge went wrong about the evidence

given. He also accepted that ground 1 showed that the judge erred in stating that there were 4 bundles of documents before him, when there were 7 inventories (clearly labelled and indexed).

4. Ground 1 focuses on a letter from the appellant's uncle. Ms Loughran showed that it was relevant to significant matters in the case, including the presence of the author at the wedding of the appellants. Mr Clark astutely observed that [42] of the decision could be read as showing that the information in the letter had been taken into account; but he mentioned, very fairly, that the information could also be derived from Q/A 56 of the first appellant's interview, not only from the letter. The decision does not refer specifically to the letter and it is highly likely that it was overlooked.
5. Ground 6 discloses that the judge was wrong in taking the evidence of the first appellant to be that her husband told her he wanted to remain in the UK (before their problems in Iraq crystallised). The judge did not specify the weight he gave to that matter, but it obviously tended to support his view that the case was a fabrication.
6. Ms Loughran supported ground 4, lack of reasoning, by reference to detailed evidence at interview, consistent between the two appellants, and not mentioned in the decision. She supported ground 5, speculation, by examining the appellants' evidence about the closeness or otherwise of their contact with one of the persons ([I]) involved in the alleged chain of events, which does not sit with the judge's view of the closeness of the connection and the inevitability or credibility of what might have been discussed.
7. Grounds 4 and 5 are of some substance, although they might not have required the setting aside of a decision which was otherwise soundly based. Ground 1 and 6 are both strong. Taking the errors together, the decision cannot safely stand.
8. It was common ground that on that finding, the outcome should be as follows.
9. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing.
10. 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.
11. The member(s) of the FtT chosen to consider the case are not to include Judge Handley.
12. No anonymity order 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'.

20 February 2020
UT Judge Macleman