



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13515/2016  
PA/13905/2016

THE IMMIGRATION ACTS

Heard at Glasgow  
On 5 October 2017

Decision & Reasons Promulgated  
On 6 October 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

USMAN AHMED ZAFAR & AMATUL JAMIL BHATTI

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr E MacKay, of McGlashan MacKay, Solicitors  
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal against a decision by First-tier Tribunal Judge David C Clapham SSC, promulgated on 21 March 2017.
2. The grounds are detailed, running to 35 paragraphs over 8 ½ pages.
3. On 28 July 2017 FtT Judge Kinnell granted permission:

“The grounds are far too prolix. The essential point is that the judge arguably erred by not merely treating the findings of an earlier judge as a starting point on *Devaseelan* principles, but also as a finishing point, without assessing or making any findings on the evidence in the current appeal and applying current country guidance to those findings.”

4. Mr Matthews conceded that the essential point in the grounds, as extracted by the permission judge, had merit. The previous decision was reached by reference to guidance then current. The judge mistakenly thought that he should apply the old and not the updated guidance, and that the previous finding that the appellant's activities were "at a significantly low level" (¶58) resolved the case. That was no longer the test. The error could not be corrected by applying the guidance to the facts found, because the judge failed to make findings on the further evidence and materials offered by the appellants.
5. Parties agreed on the following outcome.
6. The decision of the FtT is **set aside**. None of its findings are to stand, other than as a record of what was said at the hearing.
7. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
8. The member(s) of the FtT chosen to consider the case are not to include Judge David C Clapham SSC.
9. No anonymity direction has been requested or made.

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

5 October 2017  
Upper Tribunal Judge Macleman