



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: HU/04721/2018
HU/09575/2018

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 13 December 2023**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE BLUNDELL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**FARAH BASHIR
MUHAMMAD ADNAN**

Respondents

Representation:

For the Appellant: Ms A Everett, Senior Presenting Officer

For the Respondent: Mr J Dhanji, instructed by ATM Solicitors

Heard at Field House on 11 October 2023

DECISION AND REASONS

1. This appeal comes before us on remittal from the Court of Appeal. By an order which was sealed on 11 May 2020, Master Meacher ordered by consent that the decision of the Upper Tribunal should be set aside in its entirety and the appeal remitted for a fresh assessment of whether the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The decision under appeal is that of First-tier Tribunal Judge Hembrough (“the judge”). By that decision, which was issued on 16 October 2018, the judge found that the first respondent had employed deception in her dealings with His Majesty’s Revenue and Customs (“HMRC”) but that the removal of the respondents would be in breach of Article 8 ECHR.

3. It is unnecessary, in light of what we say below, to set out the procedural history of the case in very much detail. It suffices for present purposes to note the following.
4. The Secretary of State was granted permission to appeal to challenge the judge's decision to allow the appeal on Article 8 ECHR grounds. The central argument she sought to advance in the grounds of appeal was that the judge had failed to make a clear or adequately reasoned finding as to whether or not the first respondent fell foul of paragraph 322(5) of the Immigration Rules.
5. After the appeal was remitted by the Court of Appeal, the respondents filed and served a response to the grounds of appeal under rule 24. It was contended in that response that the judge had not erred in the manner contended by the Secretary of State but that he had erred in finding that the first respondent had employed deception in her dealings with HMRC. The advocates before us adopted the shorthand of describing the latter argument as a 'cross appeal'.
6. At the outset of the hearing before us, Ms Everett accepted that she was in difficulty and that she considered it unlikely in light of Balajigari & Ors v SSHD [2019] EWCA Civ 673; [2019] 1 WLR 4647 that the Secretary of State's grounds of appeal were capable of establishing an error of law in the decision of the judge. She had sought instructions but had not received any. The skeleton argument which had been filed and served on behalf of the Secretary of State failed to engage with the findings of fact made by the judge or with the criticism of those findings in the grounds of appeal. She did not seek to make any further submissions.
7. For his part, Mr Dhanji indicated initially that he was instructed to oppose the Secretary of State's appeal and to advance the 'cross appeal' in the rule 24 notice.
8. We rose to consider the submissions which had been made.
9. Having considered the Secretary of State's grounds of appeal in light of what was said by Ms Everett, we indicated to the advocates that we did not dissent from her submissions. It is not easy to see how the grounds of appeal make out a challenge to the judge's decision, in the light of Balijagari v SSHD. We indicated that we did not need to call on Mr Dhanji to respond to the Secretary of State's submissions.
10. Mr Dhanji indicated that he had taken instructions and had been instructed to withdraw the 'cross appeal' against the judge's findings of fact. In those circumstances, it suffices for us to state that the Secretary of State's appeal is dismissed and the decision of the FtT to allow the appeal on Article 8 ECHR grounds shall stand.

Notice of Decision

The Secretary of State's appeal is dismissed.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 December 2023