



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02564/2016

THE IMMIGRATION ACTS

Heard at Field House
On 29th August 2018

Decision & Reasons Promulgated
On 18th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR AQIB MURAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Malik, instructed by R Spio & Co Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 4th November 2016 to refuse his application for leave to remain in the UK as a Tier 4 (General) Student Migrant. First-tier Tribunal Judge Hanes dismissed the appeal in the decision promulgated on 13th December 2017. Permission to appeal to this Tribunal was refused by the First-tier Tribunal but, on renewal, was granted by Upper Tribunal Judge Allen on 11th July 2018.

Background

2. The background to this appeal is that the Appellant entered the UK on 2nd September 2010 with a Tier 4 (General) Student visa. He was granted further leave to remain in that category until 23rd April 2012. On 22nd April 2012 he applied for further leave to remain as a Tier 1 (Entrepreneur) but on 8 June 2013 he requested that his application be varied to a Tier 4 (General) Student. That application was refused by the Secretary of State on 22nd May 2015 under paragraph 322(1A) of the Immigration Rules on the basis that the Secretary of State considered that the National Bank of Pakistan statements submitted in connection with that application were false.
3. The Appellant's appeal against that decision was allowed by First-tier Tribunal Judge Hanley in a decision promulgated on 22nd June 2016. At the hearing before First-tier Tribunal Judge Hanley the Secretary of State was unrepresented and submitted no evidence from the National Bank of Pakistan and in particular failed to provide a letter referred to in the reasons for refusal letter which indicated that the National Bank of Pakistan had confirmed in writing that the statements were false. Judge Hanley heard oral evidence from the Appellant noting that there was no evidence that the bank statements from Punjab Bank submitted in connection with the Tier 4 Student application were anything other than genuine. The judge found at paragraph 20:

"The respondent has failed to disclose the evidence upon which she relies in connection with the assertion that the Bank of Pakistan bank statements are false. The respondent claims to have received written confirmation from the Bank, but that letter or whatever form that written evidence is in has *not* been disclosed to the appellant nor filed at court".
4. At 21 the judge concluded; "I find that the respondent has failed to discharge the burden which is on her". The judge went on to note that whatever happened with the Bank of Pakistan documentation there was no dishonest intent by the Appellant [23]. The judge concluded that the Respondent had not discharged the burden upon her and allowed the appeal to the extent that the Tier 4 (General) Student application made on 8th June 2013 remained outstanding before the Respondent.
5. The matter went back to the Secretary of State for reconsideration. In a decision dated 4th November 2016, the Respondent refused the application again. The Respondent refused the application under paragraph 322(1A) on the following basis:

"In your application submitted 08 June 2013, you submitted a bank statement from National Bank of Pakistan.

I am satisfied that the statement was false because I have received third party confirmation from the issuing bank confirming the document is not genuine.

As a false document has been submitted in relation to your application, it is refused under paragraph 322(1A), of the Immigration Rules".
6. The Secretary of State went on to consider the other evidence and gave two further reasons for refusing the application. The first was that the Appellant was not awarded the 30 points claimed for a valid Confirmation of Acceptance for Studies (CAS) under

Appendix A of the Immigration Rules because the course for which the CAS had been assigned did not represent academic progression from his previous study. Secondly, the application was for study at Master's degree level and the Appellant had not successfully completed a course at degree level in the UK of a minimum duration of four years. The application was accordingly refused under paragraph 245ZX (ha) and (c) of the Immigration Rules.

7. The appeal against that decision was heard by First-tier Tribunal Judge Hanes. Judge Hanes set out the background and then at paragraphs 6 and 7 set out the Appellant's oral evidence. At paragraph 8, the judge set out the findings made by Judge Nicholls in a previous decision on 3rd December 2014 at paragraph 9. The judge went on to set out Judge Hanley's findings at paragraph 10. At paragraph 11 the judge dealt with her approach to Judge Hanley's findings as follows:

“Turning to the appeal before me, the Tier 4 application made on 8 June 2013 (and as varied subsequently to include a new CAS provider) is a variation ('substitution') of the original in time Tier 1 application. It is not a 'new' application as the Appellant's leave to remain expired on 23 April 2013. In his own words (twice in letters to the Respondent), the Appellant requested that the documents he had submitted in support of his Tier 1 application be transferred to his Tier 4 application. This included the [National Bank of Pakistan] statement as he did not specifically indicate otherwise. The findings of Judge Hanley with respect to credibility/paragraph 322(1A) are not binding in the appeal before me given that he allowed the Appellant's appeal to the limited extent that the Tier 4 application remained outstanding before the Respondent. Since Judge Hanley's decision, the respondent has reconsidered the matter and made a new decision. The respondent has now also provided copies of all of the documents relied on in support of the NBP statement not being genuine. At the hearing the Appellant had the opportunity to provide further oral evidence on this issue (following a lunch break).” *[my emphasis]*

8. The judge went on at paragraph 12 to consider the Appellant's evidence and the document verification report of May 2013 submitted by the Respondent indicating that the National Bank of Pakistan (NBP) statement “is NOT GENUINE/FAKE”. Judge Hanes went on to conclude that the Respondent had met the burden of proof and was satisfied that the NBP statement was a false document and found at paragraph 322(1A) applied [12-13]. The judge found that, given her conclusions, it was not necessary to consider the refusal pursuant to paragraph 245ZX (dealing with the other matters raised in the reasons for refusal letter).

Grounds of appeal

9. In the Grounds of Appeal to the Upper Tribunal it is contended that Judge Hanes erred in law in adjudicating on the issue of whether the National Bank of Pakistan bank statements were false because that issue had already been considered and determined by First-tier Tribunal Judge Hanley. It is alternatively contended that Judge Hanes erred in departing from Judge Hanley's findings and/or failing to treat them as his starting point.

Submissions

10. At the hearing before me Mr Malik developed the grounds relying on the authorities in relation to the treatment of previous findings. In his submission **Mubu** is on all fours with the instant case. He submitted that the findings of Judge Hanley could not be reopened unless there were good reasons and he submitted that the approach set out in the case of **Mubu** should have been adopted by Judge Hanes. He highlighted that in the hearing before Judge Hanley the Secretary of State was not represented and that the refusal in November 2016 raised the same ground as in the previous decision, that is in relation to the National Bank of Pakistan statements. In his submission the Secretary of State did not challenge the findings of First-tier Tribunal Judge Hanley, instead, ignoring those findings, the Secretary of State refused the application again on 4th November 2016 for the same reasons. Mr Malik submitted that Judge Hanes should not have heard evidence from the Appellant, as recorded at paragraphs 6 and 7, without deciding whether the issue had already been determined. He submitted that the judge's approach was inconsistent with the guidance in **Mubu**. He submitted that it is clear from the final sentence of paragraph 11 that the judge considered the fact that the Respondent had now produced evidence in relation to the National Bank of Pakistan statements was determinative. He submitted that this is exactly what happened in the case of **Mubu** when the Secretary of State provided evidence at the second hearing. In his submission Judge Hanes had put forward no explanation why the evidence not adduced before Judge Hanley was now being taken into account. In his submission Judge Hanes should have followed the guidance in **Mubu** and found that the issues had already been determined and could not be reopened. He submitted that, in the alternative, Judge Hanes was obliged to take Judge Hanley's findings as a starting point in accordance with the case of **Devaseelan**.

11. Mr Jarvis distinguished the instant appeal from that in **Mubu** for two reasons. He firstly suggested that the instant appeal differs from the circumstances in **Mubu** because, in this appeal, unlike the situation in **Mubu**, other reasons had been raised by the Secretary of State which had to be determined by the First-tier Tribunal. Those are the issues in relation to the CAS and the progression of studies. He accepted that Judge Hanes did not deal with whether there were good reasons for departing from the findings of Judge Hanley. However, he pointed out that Judge Hanes did hear oral evidence from the Appellant and in his oral evidence the Appellant accepted, as noted at paragraph 6, that he had submitted false documents from the National Bank of Pakistan in connection with the first application. Mr Jarvis contended that these two aspects to the case distinguish the case from that of **Mubu**. In his submission the Appellant's acceptance of the fact that a false document was submitted as part of a previous application made the issue a live matter, even without further evidence from the Secretary of State. Mr Jarvis accepted that the decision of Judge Hanley had not been appealed but submitted that this was because it had not finally disposed of the matter. He submitted that the Appellant's acceptance that this was a false document was significant. In his submission therefore, Judge Hanes had to engage with the evidence and apply the law to that. He submitted that there are important and material differences between this case and that of **Mubu**. He submitted that it is

difficult to see how the guidance in **Devaseelan** could have made any difference as it would indicate that the decision of Judge Hanley should have been a starting point.

12. In response Mr Malik submitted that the fact that there are additional reasons for the refusal in this case does not distinguish it from **Mubu** because the new reasons given by the Secretary of State are misconceived. He accepted that the judge should have engaged with the additional issues but submitted that the judge should not have engaged with the original decision of Judge Hanley in accordance with the guidance in **Mubu**. In his submission First-tier Tribunal Judge Hanes did not consider whether there was any good reason why the new evidence submitted by the Secretary of State had not been adduced earlier.
13. Mr Jarvis submitted that, in the previous decision, First-tier Tribunal Judge Hanley had erred in engaging with the Appellant's intentions in relation to the false evidence. However Mr Malik pointed out that Judge Hanley had not in fact allowed it on the basis of the *mens rea* or intention but had allowed the appeal on the basis that the Secretary of State had not discharged the burden upon her establish that the documents were false. In terms of the admissions made by the Appellant in oral evidence in Mr Malik's view before hearing evidence from the Appellant Judge Hanes was obliged to consider whether to reopen the issue decided by Judge Hanley and in his submission that approach amounts to material error. In his submission paragraph 6 should be set to one side and the decision of **Mubu** should be applied to the process undertaken by Judge Hanes. In his view that would lead to the decision being set aside.

Case law

14. The relevant authorities in relation to the approach to a previous decision are as follows.
15. In **Devaseelan v Secretary of State for the Home Department [2002] UKIAT 00702** the Tribunal set out the following guidelines as to how a second Adjudicator (now First-tier Tribunal Judge) should approach a decision of another Adjudicator who has heard an appeal by the same Appellant.

"d. Our guidelines on procedure in second appeals

37. ... The first Adjudicator's determination stands (unchallenged, or not successfully challenged) as an assessment of the claim the Appellant was then making, at the time of that determination. It is not binding on the second Adjudicator; but, on the other hand, the second Adjudicator is not hearing an appeal against it. As an assessment of the matters that were before the first Adjudicator it should simply be regarded as unquestioned. It may be built upon, and, as a result, the outcome of the hearing before the second Adjudicator may be quite different from what might have been expected from a reading of the first determination only. But it is not the second Adjudicator's role to consider arguments intended to undermine the first Adjudicator's determination.

38. The second Adjudicator must, however be careful to recognise that the issue before him is not the issue that was before the first Adjudicator. In particular, time has passed; and the situation at the time of the second Adjudicator's determination may be shown to be different from that which obtained previously. Appellants may want to ask the second Adjudicator to consider arguments on issues that were not - or could not be - raised before the first Adjudicator; or evidence that was not - or could not have been - presented to the first Adjudicator.
39. In our view the second Adjudicator should treat such matters in the following way.
- (1) **The first Adjudicator's determination should *always* be the starting-point.** It is the authoritative assessment of the Appellant's status at the time it was made. In principle issues such as whether the Appellant was properly represented, or whether he gave evidence, are irrelevant to this.
- (2) **Facts happening since the first Adjudicator's determination can *always* be taken into account by the second Adjudicator.** If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and on the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent.
- (3) **Facts happening before the first Adjudicator's determination but having no relevance to the issues before him can *always* be taken into account by the second Adjudicator.** The first Adjudicator will not have been concerned with such facts, and his determination is not an assessment of them.
40. We now pass to matters that could have been before the first Adjudicator but were not.
- (4) **Facts personal to the Appellant that were not brought to the attention of the first Adjudicator, although they were relevant to the issues before him, should be treated by the second Adjudicator with the greatest circumspection.** An Appellant who seeks, in a later appeal, to add to the available facts in an effort to obtain a more favourable outcome is properly regarded with suspicion from the point of view of credibility. (Although considerations of credibility will not be relevant in cases where the existence of the additional fact is beyond dispute.) It must also be borne in mind that the first Adjudicator's determination was made at a time closer to the events alleged and in terms of both fact-finding and general credibility assessment would tend to have the advantage. For this reason, the adduction of such facts should not usually lead to any reconsideration of the conclusions reached by the first Adjudicator.
- (5) **Evidence of other facts - for example country evidence - may not suffer from the same concerns as to credibility, but should be treated with caution.** The reason is different from that in (4). Evidence dating from before the determination of the first Adjudicator might well have been relevant if it had been tendered to him: but it was not, and he made his determination without it. The situation in the Appellant's own country at the time of that determination is very unlikely to be relevant in deciding whether the Appellant's removal at the time of the second Adjudicator's determination

would breach his human rights. Those representing the Appellant would be better advised to assemble up-to-date evidence than to rely on material that is (ex hypothesi) now rather dated.

41. The final major category of case is where the Appellant claims that his removal would breach Article 3 for the same reason that he claimed to be a refugee.

(6) If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator, and proposes to support the claim by what is in essence the same evidence as that available to the Appellant at that time, the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be re-litigated. We draw attention to the phrase 'the same evidence as that available to the Appellant' at the time of the first determination. We have chosen this phrase not only in order to accommodate guidelines (4) and (5) above, but also because, in respect of evidence that was available to the Appellant, he must be taken to have made his choices about how it should be presented. An Appellant cannot be expected to present evidence of which he has no knowledge: but if (for example) he chooses not to give oral evidence in his first appeal, that does not mean that the issues or the available evidence in the second appeal are rendered any different by his proposal to give oral evidence (of the same facts) on this occasion.

42. We offer two further comments, which are not less important than what precedes then.

(7) The force of the reasoning underlying guidelines (4) and (6) is greatly reduced if there is some very good reason why the Appellant's failure to adduce relevant evidence before the first Adjudicator should not be, as it were, held against him. We think such reasons will be rare. There is an increasing tendency to suggest that unfavourable decisions by Adjudicators are brought about by error or incompetence on the part of representatives. New representatives blame old representatives; sometimes representatives blame themselves for prolonging the litigation by their inadequacy (without, of course, offering the public any compensation for the wrong from which they have profited by fees). Immigration practitioners come within the supervision of the Immigration Services Commissioner under part V of the 1999 Act. He has power to register, investigate and cancel the registration of any practitioner, and solicitors and counsel are, in addition, subject to their own professional bodies. An Adjudicator should be very slow to conclude that an appeal before another Adjudicator has been materially affected by a representative's error or incompetence; and such a finding should always be reported (through arrangements made by the Chief Adjudicator) to the Immigration Services Commissioner.

Having said that, we do accept that there will be occasional cases where the circumstances of the first appeal were such that it would be right for the second Adjudicator to look at the matter as if the first determination had never been made. (We think it unlikely that the second Adjudicator would, in such a case, be able to build very meaningfully on the first Adjudicator's

determination; but we emphasise that, even in such a case, the first determination stands as the determination of the first appeal.)

(8) **We do not suggest that, in the foregoing, we have covered every possibility.** By covering the major categories into which second appeals fall, we intend to indicate the principles for dealing with such appeals. It will be for the second Adjudicator to decide which of them is or are appropriate in any given case."

16. In the case of **Chomanga (binding effect of unappealed decisions) Zimbabwe [2011] UKUT 00312** Judge Latta said:

"20. I am satisfied that the application of these principles resolves the issues which have arisen in this appeal and that the arguments about abuse of process raised in the grounds are largely beside the point. The respondent was bound by the findings made by IJ Ross who was not satisfied that she had produced any or any sufficient evidence to maintain the assertion that the appellant had obtained her leave to remain on the basis of UK ancestry by submitting false documents. The respondent had had the opportunity of filing evidence in support of that contention but had failed to do so or indeed to attend the hearing. By making a further decision by relying on evidence which could and should have been produced at that hearing, the respondent was in substance attempting to circumvent the judge's decision. It is right that in para 17 of his determination the judge expressed the view that it was open to the respondent to curtail the leave again and to produce the relevant documents on any subsequent appeal but in the light of TB that view was incorrect. He said that the issue of falsity had not been resolved but it had by the respondent's failure to produce evidence and by the immigration appeal being allowed. These comments made obiter by the judge did not give the respondent the power to take a course of action not open to her under the law.

21. None of the exceptions to the general principle that an unappealed decision is binding set out in para 35 of Stanley Burnton LJ's judgment apply in the present case. There was no fresh evidence which was not available at the date of the hearing, no change in the law and no relevant change of circumstances or new events after the date of decision. This was also not a case where there was subsequent evidence of fraud: see EB (fresh evidence - fraud- directions) Ghana [2005] UKAIT 000131. The issue before IJ Ross was whether false documents had been relied on and the evidence on which the respondent based her subsequent decision was exactly the same as the evidence previously relied on.

22. For these reasons I am not satisfied that it was open to the respondent to curtail the appellant's current leave following the dismissal of the appeal by IJ Ross by making a fresh decision based on precisely the same evidence..."

17. The background to the appeal in **Mubu and others (immigration appeals - res judicata) [2012] UKUT 00398** IAC is that the Secretary of State decided on 14th January

2008 that two certified copy birth certificates had been produced in support of the applications “were not authentic”. An appeal against that decision was heard by Judge Tipping on 25th June 2008. The Secretary of State was not represented at that hearing and Judge Tipping allowed the appeal taking into account further evidence obtained by the Appellants and on the basis that no further evidence had been submitted by the Respondent who bore the burden of establishing that the further certificates submitted by the Appellant were not genuine. The Secretary of State did not appeal against the decision of Judge Tipping, instead granting each of the Appellants leave to remain until June 2010. The Appellant applied for indefinite leave to remain in June 2010 but the Secretary of State refused those applications on the basis that the birth certificate submitted was not authentic. In an appeal against those decisions to the First-tier Tribunal the First-tier Tribunal Judge summarised the decision of Judge Tipping and considered that that decision disposed of the central issues between the parties, did not consider the new evidence submitted by the Secretary of State which had not been before Judge Tipping, and allowed the appeals. The Secretary of State appealed to the Upper Tribunal who referred to a number of decisions including that of **Chomanga and Devaseelan**. The Upper Tribunal also considered the case of **AS and AA (Effect of previous linked determination) Somalia [2006] UKAIT 00052** where it was noted that parties to an action must regard the matter as finally settled between them by a subsisting order of a competent court.

18. In **Mubu** the Upper Tribunal went on to point out that in that case the Appellant succeeded before Judge Tipping and that the issues decided by Judge Tipping could not be relitigated because the cause of action was extinguished by the fact that there was a final determination in favour of the claimants and it was noted that the Secretary of State had acted on the determination by granting leave to remain to the claimants [37]. The Upper Tribunal went on to consider the case of **Devaseelan** and the guidance given there, concluding that those guidelines apply whether any previous decision was in favour of or against the Secretary of State.
19. In **AS and AA** at paragraph 62 the Upper Tribunal considered the **Devaseelan** guidelines as set out in at paragraph 51 of **Mubu** as follows:

“51. In **AS & AA** Mr Ockelton concluded as follows, when considering the application of the *Devaseelan* guidelines:

*[62] ... a decision-maker considering a second application, or second claim, or second proceedings, to which a person involved in earlier proceedings was a party, should no doubt have regard to the previous judgment. There are two reasons. First, it may well summarise what was said on the appellant’s behalf on the earlier occasion. In a jurisdiction such as ours which has no hearsay rule, that material has evidential value of its own. Secondly, it is (so far) the authoritative decision on the matters that were raised at that time. If the parties did not take any opportunity available to them to challenge those findings then, the Tribunal should require a good reason for departing from them now. Considerations of that sort are behind the guidance in *Devaseelan*, which we set out earlier in this determination. The previous judgment is not binding, but it is not to be ignored. If there is no good reason for departing*

from it, it must, as between the parties to that litigation, be treated as settling the issues with which it was concerned and the facts on which the determination was based"

52. We respectfully endorse that as the correct approach to be applied in appeals such as the instant one.

53. Although no mention was made of the *Devaseelan* guidelines in the decision of Chomanga, the decision itself is entirely consistent with the proper application of points 1, 6 and 7 of those guidelines. In Chomanga the Secretary of State was relying on identical factual assertions in the second appeal as had been determined in the first appeal. There was found to be no 'good reason' why the Secretary of State had failed to adduce relevant evidence before the Tribunal hearing Ms Chomanga's first appeal, it being noted that, on the facts of that case, the Secretary of State was doing no more than attempting to circumvent the first Tribunal's decision without having appealed against it. "

20. The head note of Mubu reiterates the Upper Tribunal's view that the correct approach is that set out in Devaseelan:

"The principle of res judicata does not operate in immigration appeals.

The guidelines set out in Devaseelan [2002] UKIAT 00702; [2003] Imm AR 1 are always to be applied to the determination of a factual issue, the dispute as to which has already been the subject of judicial determination in an appeal against an earlier immigration decision involving the same parties. This is so whether the finding in the earlier determination was in favour, or against, the Secretary of State."

21. I accept Mr Malik's submission that the guidance in Mubu which took account of all relevant case law is a statement of the current position in relation to previous judicial determinations.

22. I reserved my decision at the hearing.

Decision

23. Mr Malik's primary submission as set out in the grounds of appeal and developed at the hearing, is essentially that the decision in Mubu means that the decision of Judge Hanley should be treated as settling the issue of the alleged false bank statements. His alternative submission is that Judge Hanes should have treated Judge Hanley's decision as a starting point in accordance with the Devaseelan guidelines. However, in my view, it is not possible to separate the arguments in that way. It is clear from the authorities set out above, and in particular the decision of Mubu in the head note and at paragraphs 50-53 (above) that the guidance given in Devaseelan is still the proper approach to the consideration of findings made in an earlier appeal by the same Appellant.

24. At paragraph 11 of her decision Judge Hanes considered the findings of Judge Hanley and concluded that, because the Tier 4 application made on 8th June 2013 was not a

new application and because Judge Hanley allowed the appeal only to the extent that it was outstanding before the Secretary of State, Judge Hanley's findings were not binding upon her.

25. I see some attraction in this approach. This could be considered to be consistent with the views of the Upper Tribunal in **Mubu** where the Tribunal said at paragraph 37 that the decisions under appeal could not be re-litigated " *...not because the Secretary of State is estopped from doing so, but because the cause of action i.e. the claimants' appeals against the Secretary of State's decisions of 14th January 2008 not to grant them leave to remain, were, extinguished by the fact that there was a final determination in the claimants' favour. Indeed, the Secretary of State acted on that determination by granting the claimants leave to remain.*" That raises the question as to whether the Appellant's appeal in this case was extinguished by the decision of Judge Hanley. It is not clear on the papers before me why Judge Hanley allowed the appeal to the limited extent that the matter remained outstanding before the Secretary of State rather than allowing the appeal outright. It could be argued that this is not a 'final determination' of the appeal. However, Judge Hanley's decision could have been appealed by either party. It was not. Further, the Secretary of State acted on Judge Hanley's decision by reconsidering the Tier 4 (General) Student application. Looked at in this way the decision of Judge Hanley did dispose of the issue before him and was a 'final determination' of that issue.
26. In these circumstances the proper approach to be taken was that set out in **Devaseelan**, consistent with the approach in **Chomanga** as approved in **Mubu** which clarified that the **Devaseelan** guidelines apply whether the finding in the earlier determination was in favour, or against, the Secretary of State.
27. Judge Hanes therefore erred in her approach to Judge Hanley's decision. That decision should have been her starting point in relation to the issue of the false documents. At the hearing before Judge Hanes the Secretary of State produced evidence which existed at the date of the hearing before Judge Hanley. Judge Hanes erred in failing to consider the guidelines in **Devaseelan** as to how to approach that evidence. The judge should have asked whether there was a 'very good reason' why the evidence from National bank of Pakistan had not been produced by the Secretary of State at the earlier hearing (paragraph 7 of the **Devaseelan** guidelines). In my view this error is a material error as it goes to the heart of the determination of this appeal.
28. Both representatives agreed that if I were with Mr Malik in relation to the **Mubu** point in relation to the false documents then the matter should be remitted to the First-tier Tribunal to hear evidence and to decide the remaining issues in the reasons for refusal letter. As I have found that Judge Hanes erred in her approach to the new evidence submitted by the Secretary of State this issue too remains a live one before the First-tier Tribunal on remittal.
29. In light of the nature and extent of the findings of fact to be made in order for the decision in the appeal to be re-made, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal. Accordingly I set aside

the decision in its entirety and remit the appeal to the First-tier Tribunal to be determined afresh.

Notice of Decision

The decision of the First-tier Tribunal Judge contains a material error of law.

I set that decision aside in its entirety.

I remit the decision to the First-tier Tribunal to be heard by a different judge.

No anonymity direction is made.

Signed

Date: 17th September 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

As the appeal is being remitted the issue of the fee award is to be determined by the First-tier Tribunal.

Signed

Date: 17th September 2018

Deputy Upper Tribunal Judge Grimes