



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

Appeal Number: HU/00527/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 13 August 2019**

**Decision & Reasons Promulgated  
On 21 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**GAYAN GUNASEKURA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr Hodgetts, Counsel

For the respondent: Mr Bates, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') sent on 1 April 2019, dismissing his appeals on human rights grounds.
2. Mr Bates conceded that the appellant's grounds of appeal contain errors of law such that the FTT decision must be set aside. Both parties therefore consented to the appeal being allowed and the FTT's decision being set aside. I decided that it was appropriate to allow

the appeal pursuant to rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I now give brief reasons for doing so.

3. This is an appeal that turned on the respondent's contention that the appellant had misrepresented his earnings such that 322(5) of the Immigration Rules applied. The FTT concluded that the appellant employed deliberate repeated deception over many years, and for this reason dismissed his appeal. I agree with the parties that the FTT's findings for rejecting that claim are infected by material errors of law, as identified in the grounds of appeal, and must be remade entirely. The FTT has failed to take material matters into account and failed to apply the principles set out in Balajigari v SSHD [2019] EWCA Civ 673, 16 April 2019 (albeit this was not available at the time of the FTT hearing).
4. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT. Fresh findings of fact are necessary and this will involve detailed oral evidence and cross-examination on wide-ranging matters relevant to the allegation of sustained and deliberate deception.

## **Decision**

5. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside.
6. The appeal shall be remitted to the FTT, where the decision will be remade on a de novo basis by any judge other than Judge Row.

Signed: *UTJ Plimmer*

Ms M. Plimmer  
Judge of the Upper Tribunal

Date:  
13 August 2019