



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05252/2016

**THE IMMIGRATION ACTS**

Heard at Manchester Piccadilly  
On 24 November 2017

Decision & Reasons Promulgated  
On 4 December 2017

Before

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

Between

**TAHIR YASEEN**

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Malik counsel instructed by Awan Legal Associates

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 20 February 1984 and is a national of Pakistan.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Evans promulgated on 28 February 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 23 January 2016 to refuse the Appellants application for indefinite leave to remain based on long residence..
5. The refusal letter gave a number of reasons which were in essence that :
  - (a) It was accepted that the Appellant had 10 years continuous residence in the UK.
  - (b) The Appellants actions in not submitting his tax returns until requested were such that his character and conduct made it undesirable to allow the Appellant to remain in the UK by reference to paragraph 276B(ii)(c) of the Rules.
  - (c) In addition the Appellants conduct led to a refusal under paragraph 322(5) of the Rules: the provision does not lead to mandatory refusal but his actions in not declaring income to HMRC when requested to do so was such that a refusal under paragraph 322(5) was appropriate.

#### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Evans ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing: that the Judge was in error in that the requirements of 276B(ii) and paragraph 322(5) of HC 395 are both discretionary ; a finding under paragraph 322(5) requires there to be deception in an application for leave to remain; the Judge failed to recognise that the deception must have been carried out for the purpose of securing an advantage in immigration terms; the Judge misdirected himself as to when the Appellant filed late returns; failed to take into account the reasons for the Appellants confusion in the interview.
8. On 9.9. 2017 First-tier Tribunal Judge Bird gave permission to appeal.
  - (a) At the hearing I heard submissions from Mr Malik on behalf of the Appellant that: At paragraph 10 of the decision the Judge set out an incorrect version of paragraph 322(5) of the Rules suggesting that these

were grounds on which leave to remain '*are to be refused*' rather than '*should normally be refused.*'

- (b) The Appellant in this case did not file his tax returns on time in that his tax returns for the annual periods between 2010-2013 were not filed until December 2015: there was delay and not dishonesty. The Appellant gave an explanation for the delay.
- (c) The Judge did not find that he acted dishonestly at paragraph 37 but with a lack of integrity.
- (d) The Judge did not consider whether the discretion was exercised lawfully.
- (e) He referred to the JR case of Samant JR/6546/2016 which sets out a test to be applied in establishing dishonesty at paragraph 10.
- (f) The Judge in this case made no finding of dishonesty and a finding of lack of integrity is not enough.
- (g) Mr Mc Vitie conceded that a finding under paragraph 322(5) required dishonesty.
- (h) The Appellant qualified for ILR but for this issue.
- (i) The Judge failed to recognise that it was a matter of discretion.

9. On behalf of the Respondent Mr Mc Vitie submitted that:

- (a) JR decisions are not binding on this Tribunal.
- (b) The Oxford English Dictionary definition was that integrity was lack of honesty.
- (c) The Judge clearly found that the Appellant was unwilling to pay his taxes and only paid because of his impending interview with UKVI and therefore he was dishonest even if different terminology was used.
- (d) In relation to whether the Judge failed to recognise that refusal under paragraph 322(5) was discretionary this could not make a material difference given the Judges finding that there was a finding of '*persistent failure*' and this

provided grounds for '*substantia criticism of the Appellants character and conduct.*'

10. In reply Mr Malik on behalf of the Appellant submitted:

- (a) There was no clear finding of dishonesty.
- (b) The Rules were drafted so that some led to mandatory refusal others there was a discretion. If a finding of dishonesty does not automatically lead to failure of an application the Judge has to stand back and decide whether to exercise the discretion to refuse.

### **The Law**

11. The Appellants application for ILR on the basis of long residence was considered under paragraph 276B of the Rules. In so far as they are relevant they provide:

*276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:*

*(i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom.*

*(ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:*

*(a) ..*

*(b) ..*

*(c) personal history, including character, conduct, associations and employment record; and*

*(d) ..*

*(e) compassionate circumstances; and*

*(f) any representations received on the person's behalf; and*

(iii) *the applicant does not fall for refusal under the general grounds for refusal.*

(iv)..

(v) ....

12. In addition to the grounds for refusal of extension of stay set out in Parts 2-8 of these Rules, the paragraph 322 also applies and this includes at 322(5):

*“Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused*

*(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;”*

### **Finding on Material Error**

13. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

14. The basis of the refusal in this case as set out in the refusal letter was that the Appellants actions in the late submission of his tax returns were such that it would be undesirable to allow him to remain in the UK by reference to the public interest factors set out in paragraph 276B(ii)(c) and that such conduct should also result in a refusal under the provisions of paragraph 322(5) of the Rules. The two provisions are worded differently and thus potentially contemplate different behaviours and as noted above in relation to 322, it is clear that by virtue of its opening words - "In addition to" - it supplements the grounds for refusal of extension set out in the preceding Parts 2 - 8 of the Rules.

15. It is clear that the behaviours set out in paragraph 276B may fall short of criminality or require dishonesty such as for example an applicant who had received a caution for a behaviour that did not involve an element of dishonesty but where the public interest was engaged because it reflected on his character and conduct.

16. The Judge summarised the contents of the refusal letter at paragraphs 4-12 and at paragraph 10 sets out an erroneous version of paragraph 322(5) making it a mandatory ground of refusal rather than discretionary. However I note that thereafter he makes no other reference to paragraph 322(5) and indeed when he set out 'The Law' at paragraph 18 he only set out paragraph 276B. I also note in his submissions Mr Bloomer, who represented the Appellant in the First-tier Tribunal, made no submissions in relation to paragraph 322(5) but conceded that if the Appellant could not satisfy paragraph 276B he would not succeed (paragraph 16) and sought to categorize his behaviour as naive or indolent and in such circumstances it would be disproportionate to refuse him leave.
17. The Judge was entitled to consider the way the appeal was argued before him. Thus in relation to his findings he only made a finding in respect of paragraph 276B at paragraph 38 there is no finding in respect of paragraph 322(5). Therefore I am satisfied that while the Judge made an error of law in setting out an incorrect version of paragraph 322(5) this would not be material if his assessment under paragraph 276B, that the Appellant failed to meet the requirements, was open to him.
18. Moreover I also note that the caselaw presented to me by Mr Malik all related to findings under paragraph 322(5) where dishonesty was clearly being alleged and sets out the test to be applied when such an allegation was being made. The basis of the refusal letter which the Judge properly analysed was that the Appellant had submitted his tax returns late. The word 'dishonesty' does not appear in the refusal letter nor was it put to the Appellant or argued in the submissions made by the HOPO as summarised by the Judge (paragraph 13). Mr Mc Vitie, I note, only conceded that paragraph 322(5) required dishonesty to be established not 276B.
19. The Judge therefore set out a number of detailed and well reasoned findings at paragraphs 29-36 as to why the Appellant had failed to provide adequate explanations for his failure to file tax returns and how this reflected on his character and conduct as required by 276B. The grounds set out challenges to these findings that were not enlarged on by Mr Malik and rightly so as they were no more than disagreements with conclusions that were open to the Judge on the evidence before him.

20. At paragraph 37 the Judge set out how he viewed the Appellants behaviour overall and summarised it in this way:

*“I find that the Appellant has failed to act with integrity in relation to his tax affairs.”*

21. I am satisfied that it was thereafter open to him under paragraph 276B to find that given the *‘persistent’ nature of the conduct* (it) *provides grounds for substantial criticism of the Appellants character and conduct* and was therefore such that a grant of indefinite leave was against the public interest.

22. While the Judge does not explicitly state that the public interest factors set out in paragraph 276B impart a discretionary element to the decision under paragraph 276B having set out the paragraph in full in his decision there is nothing to suggest that he does not understand the Rule and I am entitled to conclude that he did. Given his findings at paragraph 37 it was open to him to conclude that given such conduct the Respondent was correct to conclude that the Appellant could not satisfy the requirements of Paragraph 276B because the public interest was engaged by his behaviour and standing back any rational tribunal would have reached the conclusion that refusal was proportionate.

## **CONCLUSION**

**23. I therefore found that no errors of law have been established and that the Judge’s determination should stand.**

## **DECISION**

**24. The appeal is dismissed.**

Signed

Date 3.12.2017

Deputy Upper Tribunal Judge Birrell