



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01501/2018  
HU/01504/2018

THE IMMIGRATION ACTS

Heard at Manchester  
On 2 October 2018

Decision & Reasons Promulgated  
On 18 October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS AMNA ALI  
MR IRDAN ALI  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr McIndoe, Solicitor  
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity order is made.
2. The appellants are nationals of Pakistan. The second-named appellant entered the United Kingdom as a student on April 8, 2007 and his leave to remain as a student was subsequently extended until January 1, 2010. The appellant lodged an application, in time, to remain as a Tier 1 (Post-Study) Migrant on November 30, 2009 and this was granted and extended until July 10, 2016. The first-named appellant entered the United Kingdom as the second-named appellant's Tier 1 dependant on October 14, 2011.

3. The appellant lodged an application for indefinite leave to remain as a Tier 1 (General) Migrant on July 10, 2016 which he subsequently varied to an application under paragraph 276B HC 395 of March 14, 2017. The first-named appellant applied at the same time to remain as the second-named appellant's dependant. Their applications were refused by the respondent on December 6, 2017.
4. The appellants lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on December 20, 2017. The grounds argued the respondent had erred in considering their applications.
5. Their appeals came before Judge of the First-tier Tribunal A Davies (hereinafter called "the Judge") on May 15, 2018 and in a decision promulgated on May 25, 2018 the Judge dismissed their appeals under article 8 ECHR.
6. The appellants appealed the decision on June 8, 2018 on the ground that the Judge had erred in his approach to paragraph 322(5) HC 395.
7. Permission to appeal was granted on August 21, 2018 by Judge of the First-tier Tribunal Swaney who found it arguable the Judge erred by failing to consider whether or not the second-named appellant's conduct in failing to declare a portion of his income was conduct that rendered his presence in the United Kingdom undesirable particularly in light of the fact HMRC, having been made aware, took no further action.
8. No Rule 24 response has been filed and Mr Tan conceded that the central issue was whether an adverse finding was appropriate under para 322(5) HC 395.

### **SUBMISSIONS**

9. Mr McIndoe adopted his grounds of appeal. He accepted that the Judge's finding on dishonesty at paragraph 23 could not be challenged as permission to appeal had not been given on this point. He however submitted the Judge should have continued to give reasons why that dishonesty merited a refusal under paragraph 322(5) HC 395. Whilst noting what the Upper Tribunal had stated in The Queen (on the application of) Muhammad Shoban Abbasi and The Secretary of State for the Home Department he submitted that there was a difference between a judicial review hearing and a human rights appeal as they were looking at different issues. He submitted the Judge had erred by failing to take into account that the tax had been repaid before the current application had been lodged and the amount of understated tax was only £3,687. He submitted the conduct was not sufficiently serious to engage paragraph 322(5) HC 395 especially in circumstances where the HMRC had not imposed any additional penalty to the interest payment.
10. Mr Tan submitted that there was a clear finding the appellant had used deception. He drew the Tribunal's attention to paragraphs 73 to 75 of the Abbasi decision. The appellant had to take responsibility for his own tax affairs in circumstances where he would have provided the figures to his accountant. He then had the responsibility of checking his tax return to make sure it reflected his financial circumstances. The fact no penalty notice had been issued was not relevant as HMRC has leeway to decide

whether to issue penalty or not. Accordingly, even where there was no clear finding on character or conduct the Judge was entitled to conclude the Rule was not met.

11. Mr McIndoe responded to these submissions. He accepted that the appellants would not succeed on a freestanding article 8 application but he argued that they had been here lawfully throughout and that the finding on dishonesty was not sufficient to engage paragraph 322(5) HC 395.

### FINDINGS

12. Paragraph 322(5) states that that applications for leave to remain should normally be refused where it would be undesirable for a person to remain in the UK in light of their conduct, character or associations. There have been many reports of applications being refused because of discrepancies between the income declared to UKVI and information provided to HMRC. In some cases, this appears to be due to applicants (or their representatives) having committed minor errors on their tax returns, which were subsequently corrected without incurring any penalty from HMRC.
13. The Government has said that it is not its policy to refuse applications solely due to minor tax errors, and that applicants are given an opportunity to explain any discrepancies.
14. What is important in this particular appeal is that the Judge concluded the appellant did not approach his tax returns over three years in an honest manner. In reaching that finding the Judge took into account the explanation provided namely that reliance was placed on his accountant and in applying paragraph 322(5) HC 395 the Judge provided detailed reasons for finding the second-named appellant had acted dishonestly. The Judge noted there had been no complaint made about his professional advisers and as Mr McIndoe conceded he was unable to challenge the dishonesty finding as permission to appeal had not been given on that issue.
15. When the Judge considered the appellants' appeals he was not considering an appeal based on the fact the appellant had made a mistake or his accountants had made a mistake but he was considering an appeal based on a finding that the second-named appellant had been dishonest over a three year period and whilst the amounts involved were not substantial the period of dishonesty was extensive.
16. The respondent's own guidance makes it clear a person does not need to have been convicted of a criminal offence for this provision to apply. When deciding whether to refuse under this category, the key thing to consider is if there is reliable evidence to support a decision that the person's behaviour calls into question their character and/or conduct and/or their associations to the extent that it is undesirable to allow them to enter or remain in the United Kingdom.
17. Whilst I accept there has been no additional penalty imposed by HMRC that in itself does not mean the Judge should have overlooked the dishonest behaviour.

18. I am satisfied that as there was dishonesty the Judge was entitled to make the finding he did when considering article 8 ECHR. His assessment of article 8 issues can be found from paragraph 28 onwards and ultimately the Judge had to consider whether the length of time the family had spent in the United Kingdom was outweighed by the paragraph 322(5) HC 395 finding.
19. I find that the Judge's conclusion was one that was open to him and in such circumstances, I find no error of law.

**DECISION**

20. There was no error of law and I uphold the original decision.

Signed

Date 09/10/2018



Deputy Upper Tribunal Judge Alis

**FEE AWARD**  
**TO THE RESPONDENT**

I make no fee award as I have upheld the decision.

Signed

Date 09/10/2018



Deputy Upper Tribunal Judge Alis