



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05606/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 30 January 2019

Oral Decision & Reasons Promulgated  
On 25 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

UMAR ZEB  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr S. Walker, Home Office Presenting Officer  
For the Respondent: Ms P. Solanki, Counsel instructed by Law & Co Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Miles promulgated on 12 November 2018 following a hearing that took place on 25 September 2018. In his determination the First-tier Tribunal Judge determined that

he was not satisfied on balance of probabilities that the appellant had exercised dishonesty in failing to reveal in a return to HMRC what was an undoubted understatement of his earnings, such that in subsequent correspondence with HMRC he accepted that there was an additional liability of £10,858.

2. I shall refer to Mr Zeb as “the appellant” as he was in the First-tier Tribunal.
3. Mr Zeb is a citizen of Pakistan who was born on 13 April 1971 and he had applied for indefinite leave to remain on the basis of lawful residence. The Secretary of State had initially relied upon discrepancies in relation to three years of tax returns that had been earlier made by the appellant, but it was accepted on the part of the Secretary of State that it was only one year, the year 2010- 2011, that was relevant for the purposes of the Secretary of State’s submission that dishonesty had been used in what it was accepted an understatement of his income. In the determination the judge records that he heard the evidence of the appellant and the appellant himself had already provided a witness statement. The crucial elements appear to be that in 2015, some eighteen months before he made his application for indefinite leave to remain, the appellant had instructed his then accountants, Bradley & Cooper, to inform HMRC that a mistake had been made, as a result of which a subsequent liability to pay additional income tax was raised.
4. The judge advised himself as to the correct approach by reference to the reported decision in the case of *Khan, R (on the application of) Khan v Secretary of State for the Home Department (Dishonesty, tax return, paragraph 322(5))* [2018] UKUT 00384 (IAC). At that stage the judge was not aware that it had become a reported case, perhaps it was not by then reported. At any event, it subsequently became reported and it is clear that, in paragraph 22 of his determination, the judge set out the relevant requirements. He applied that guidance as he stated in paragraph 23. Accordingly, insofar as the grounds of appeal in paragraph 1(h) assert that the First-tier Tribunal Judge did not take into account the recommended approach of the Upper Tribunal in *Khan*, that submission is not sustainable. The judge *did* take into account what was said in *Khan* and expressly set it out in paragraph 22 of his determination. He then recorded that the appellant conceded that he had misstated his earnings in the relevant year and accordingly determined that the Secretary of State had prima facie evidence of dishonesty on the basis that the appellant had signed a form which was inaccurate.
5. The judge then went on to consider whether there was an explanation for the discrepancy. There was an explanation, which he had set out previously. However, he noted that there were limitations to the explanation that had been provided. No evidence of correspondence had passed between him and his former accountants. In other words, there was no evidence of the instructions that he provided to those former accountants, nor was there documentary evidence regarding the alleged illness on the part of his father. I am bound to say I find it difficult to see how that could result in a mistake in a tax return. Nevertheless, that was a matter upon which the judge plainly did not place inordinate weight, given the fact that there was no evidence to support it.

6. He then referred to the fact that HMRC had itself characterised the appellant's conduct as careless rather than deliberate. That too is a thin ground of appeal in that, in the case of *Samant, R (on the application of) Samant v The Secretary of State for the Home Department* JR/6546/2016 and the similar case of *Abatti* JR/13807/2016, the Tribunal had suggested that only limited weight should be attached to the fact that the Revenue had decided not to raise a penalty. Nevertheless, it was a matter that the judge was entitled to take into account. More importantly, the judge took into account the fact that the application to amend the accounts was not prompted by the application for indefinite leave to remain, and therefore it could not be said that the only reason why he applied for a recalculation of his tax liability was because it suited him in the pursuit of indefinite leave to remain. On the other hand, it appears that the decision to make the adjustment was made at a time when he was seeking a mortgage. The judge knew about that and, as he said in paragraph 24, he found the case finely balanced.
7. The burden of establishing dishonesty rested on the respondent and the appellant did not have to establish his honesty. The reality is that the Secretary of State had already made out a prima facie case and the question was whether or not the evidence of the appellant was such that it made out a plausible explanation, such that it could not be said that the respondent had on balance made out the case of dishonesty. It may be that paragraphs 23 and 24 are not as carefully worded as they might be, but it is clear that the result of this was that the respondent, according to the judge, had failed to make out the charge of dishonesty. In my judgement that was the balancing exercise that the judge was required to do. It was a decision that was open to him, and certainly not one I can find flawed when the judge had the assistance of hearing and considering the appellant's own evidence.
8. In the course of the hearing Mr Walker properly conceded that it was difficult for him to argue on behalf of the Secretary of State that the findings made by the judge were not properly open to him. In those circumstances I reject the appeal of the Secretary of State.

## DECISION

- (i) The appeal of the Secretary of State is dismissed.
- (ii) The determination of the First-tier Tribunal Judge shall stand.

ANDREW JORDAN  
DEPUTY JUDGE OF THE UPPER TRIBUNAL