



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05650/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 April 2019

Decision & Reasons Promulgated  
On 1 May 2019

Before

MR JUSTICE ANDREW BAKER  
(Sitting as a Judge of the Upper Tribunal)  
UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASIF IQBAL  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr G Hodgetts, Counsel, instructed by Prime Law Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 27 December 2018 of First-tier Tribunal Judge Rowlands which allowed the appeal of Mr Iqbal against a decision refusing indefinite leave to remain (ILR) on the basis that paragraph 322(5) of the Immigration Rules applied.

2. For the purposes of this decision we refer to the Secretary of State for the Home Department as the respondent and to Mr Iqbal as the appellant, reflecting their positions before the First-Tier Tribunal.
3. Mr Iqbal was born on 30 April 1981 in Bangladesh. He came to the UK on 15 January 2007 as a student. He had leave in various categories until 2 July 2016. On 30 June 2016 he applied for ILR as a General Migrant. On 19 December 2016 he varied that application to one for ILR on the basis of long residence.
4. On 15 February 2018 the respondent refused the application for ILR. The application was refused as the respondent considered that the appellant had been dishonest when he made discrepant declarations of income to HMRC and to the Home Office when applying for leave in 2010/11 and 2012/13. The declaration of taxable income to HMRC in 2010/2011 was £26,132. In an application for leave made on 30 March 2011 he declared an income of £35,983.26. The declaration of taxable income to HMRC in 2012/2013 was £19,031. In an application for leave made on 14 May 2013 he declared an income of £35,862.14.
5. The respondent accepted that the appellant had made an application on 4 August 2016 to revise his tax on the declarations made in 2010/2011 and 2012/13 and had paid the additional tax due. The respondent remained of the view that the discrepancies and the delay of several years in correcting them showed dishonesty. The respondent did not accept that the appellant's explanation that his previous accountants were careless, made errors and did not communicate with him properly was a credible explanation for the discrepant declarations to the Home Office and HMRC. The respondent therefore applied paragraph 322(5) which states that an application may be refused on the following basis:

"The undesirability of permitting the person concerned to remain in the United Kingdom in 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;"
6. The appellant appealed the refusal of leave to the First-tier Tribunal leading to the decision issued on 27 December 2018 which is under challenge here. The First-tier Tribunal set out the appellant's evidence in paragraphs 5 to 9 of the decision. That evidence included his explanation of how the incorrect declarations of income had been made to HMRC, what steps he had taken to remedy the incorrect declarations and why he had delayed in doing so. The appellant's core case was that he had been naïve and careless, had signed blank tax returns and not dealt with the matter promptly when he became aware of it but had not acted dishonestly. His accountants had also not acted properly and, in addition, he had been particularly preoccupied in 2015 as his sister in Bangladesh had become unwell and subsequently died. Aspects of his evidence were explored in cross-examination. Paragraph 7 of the decision, for example, shows that he was challenged on his claim that he had not been in contact with his previous accountants as the documents provided suggested otherwise. The First-tier Tribunal then went on in paragraphs 13 to 16 to set out the submissions of the parties.

7. The First-tier Tribunal assessed the evidence and submissions in paragraphs 17 to 19:

- “17. I have considered all of the evidence in the case including that to which I do not specifically refer and reach the following conclusions. There is no issue over the Appellant’s nationality, identity or immigration history as these are matters accepted by the Respondent or proven by way of other documentation. It is clear that were it not for the problems with the previous application the Appellant would clearly fulfil the Immigration Rules because he has been here for more than ten years and there have been no reasons put forward to the Respondent in relation to refusing his indefinite leave to remain application on the basis of ten years’ lawful and continuous residence other than the false accounting returns.
18. The Appellant’s claim that he was not aware of this being a problem and that, effectively everything was left to Dataforce however, the emails to them on 23 November 2011, 5 July 2012 and 8 July 2012 all show that he was aware that something was not right. He was getting letters from Inland Revenue about tax not being paid properly and yet he was simply passing that on to them and not being particularly proactive. At the very least he has been negligent in his dealing with the accountants. I am extremely surprised that someone who has a business background, as does this Appellant, would have accountants completing a blank form which has a declaration on it and sending it back to his accountants who, at the time, were not being very proactive in preparing his accounts.
19. I have had produced to me, in the Appellant’s bundle, the Home Office guidance on general grounds for refusal as they relate to paragraph 322. It is said there that:

“The main types of case you need to consider for refusal under Paragraph 322(5) are those that involve criminality, a threat to national security, war crimes or travel bans.

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. This may include cases where a migrant has entered, attempted to enter or facilitate a sham marriage to evade immigration control.”

The Appellant argues that nothing that he did was criminal and that this is evidenced by the fact that not only did they not take any criminal proceedings but HMRC actually did not impose any charges for the late payment of tax. I am also of the opinion that what they appear to be showing is an under declaration of his income which would actually mean that the points that he would have got would have been exactly the same had he told the truth. Having heard the evidence of the Appellant I am most concerned about his behaviour but, on balance I am not satisfied that he was acting with any criminality and I believe that he was nothing more than reckless in the way that he allowed his accountants a far freer rein than he should have done. I do not believe that his

failure to ensure that his correct income was indicated can be said to call into question his character, conduct and associations and as I have previously stated I am satisfied that there is nothing in what he has done that made him a threat to national security.”

8. The respondent’s grounds of appeal essentially argued that the ratio of the case of **R (on the application of Khan) v Secretary of State for the Home Department (Dishonesty, tax return, paragraph 322(5)) [2018] UKUT 00384**, in particular paragraphs (iv) and (v) of the head not had not been properly applied by the First-Tier Tribunal. These paragraphs state::

“(iv) For an Applicant simply to blame his or her accountant for an “error” in relation to the historical tax return will not be the end of the matter, given that the accountant will or should have asked the tax payer to confirm that the return was accurate and to have signed the tax return. Furthermore the Applicant will have known of his or her earnings and will have expected to pay tax thereon. If the Applicant does not take steps within a reasonable time to remedy the situation, the Secretary of State may be entitled to conclude that his failure justifies a conclusion that there has been deceit or dishonesty.

(v) When considering whether or not the Applicant is dishonest or merely careless the Secretary of State should consider the following matters, inter alia, as well as the extent to which they are evidenced (as opposed to asserted):

- i. Whether the explanation for the error by the accountant is plausible;
- ii Whether the documentation which can be assumed to exist (for example, correspondence between the Applicant and his accountant at the time of the tax return) has been disclosed or there is a plausible explanation for why it is missing;
- iii Why the Applicant did not realise that an error had been made because his liability to pay tax was less than he should have expected;
- iv Whether, at any stage, the Applicant has taken steps to remedy the situation and, if so, when those steps were taken and the explanation for any significant delay.”

9. It was also submitted that HMRC not imposing a charge for late payment was not a matter on which the judge was entitled to place weight with reference made to the cases of **R (on the application of Samant) v SSHD [2017] UKAIT UR JR/656/2016** and **Abbasi JR/13807/2016**.


10. In our judgment, the First-tier Tribunal judge was unarguably aware of the correct assessment that he had to make, whether the appellant had been dishonest in his declarations of income to HMRC and the Home Office or merely careless. The appellant’s oral evidence and the submissions made to the judge reflect the principles which were subsequently approved in **Khan**, for example, the role of previous accountants and a delay in remedying incorrect declarations. The decision shows that the judge was aware of the need to examine, and not merely accept, the

appellant's claim that his previous accountants had, to some extent, been responsible for the incorrect tax declarations. The appellant gave evidence on this and was questioned further about it; see paragraphs 6, 7 and 9 of the decision. The judge considers the appellant's evidence on his dealings with his previous accountants in paragraph 18 and takes into account the weaknesses in that evidence. The same paragraph indicates that the judge also took into account the evidence on the delay in remedying the incorrect declarations. Having done so, on the materials here it is not our view that he was obliged to make a finding of dishonesty, even if the appellant's explanations were not of the strongest. Our judgment is that the First-tier Tribunal was entitled to conclude that the appellant had been careless to a high degree but had not acted so as to come within paragraph 322(5). That was additionally so where the judge was well-placed to assess the appellant's credibility after hearing from him in person.

11. The Upper Tribunal cases relied upon by the respondent in the grounds concerning the weight to be placed in an assessment such as this on HMRC not imposing late payment charges or other sanctions are not reported and were not binding on the First-tier Tribunal. In any event, in our view this was not a significant factor in the First-tier Tribunal reasoning as to why the appellant had not been dishonest. We did not find this part of the respondent's case had merit, therefore.
12. For these reasons, we did not find that the grounds showed that the decision of the First-tier Tribunal contained errors of law.

### **Notice of Decision**

13. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:   
Upper Tribunal Judge Pitt

Date: 26 April 2019