



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05860/2018
HU/07553/2018
HU/07556/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 8th March 2019

Decision & Reasons Promulgated
On: 13th March 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

RAGHAVENDER BILLIPATI
PRABHAVATHI BILLIPATI

R R B

(NO ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellants: Mr Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr Gajjar, Counsel instructed by direct access

DECISION AND REASONS

1. The Respondents are all nationals of India. They are respectively a father (the principal appellant before the First-tier Tribunal), his dependent wife and child. By its decision of the 29th October 2018 the First-tier Tribunal allowed their linked appeals on human rights grounds. The Secretary of State now has permission to challenge that decision on a point of law before this Tribunal.

2. The matter in issue before the First-tier Tribunal was whether the Secretary of State was correct to have refused to grant this family settlement in the United Kingdom. It was the Respondents' contention that having accrued ten years continuous residence in the United Kingdom with lawful leave to remain they were each entitled to a grant of indefinite leave to remain under paragraph 276B of the Immigration Rules. The Secretary of State had refused to grant such leave for one reason.
3. The Secretary of State had identified three discrepancies in the past financial declarations of the principal Respondent. In April 2011 he had told the Home Office that he had earned a total £52,344 in the preceding year, thus proving himself eligible for a further grant of leave as a Tier 1 Migrant; for the same period he had declared to HMRC earnings of only £26, 985. In June 2013 he had told the Home Office that in that year he had earned a total of £50, 585; HMRC were only told of £41,595. Finally in 2013-14 he had initially told HMRC that he had earned from self-employment £4103 but this had subsequently been amended to £7948. Although the Secretary of State accepted that the tax returns had subsequently been amended to reflect the higher figures claimed, the Secretary of State was satisfied that the principal Respondent had misrepresented his earnings to either the HMRC or UKVI or both. As a result the Secretary of State found that the principal Respondent's application fell for refusal under one of the 'general' provisions at Part 9 of the Rules, namely paragraph 322(5):

Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to 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;

4. The applications of the second and third Respondents fell to be refused in line.

The Decision of the First-tier Tribunal

5. The First-tier Tribunal directed itself that where dishonesty is alleged the burden falls to the Secretary of State, and recorded the agreement of the parties that should the Secretary of State fail to discharge that burden, the appeal would have to be allowed.
6. The Tribunal heard oral evidence from the principal Respondent, whom it found to be an "honest and reliable witness" [§19]. It then had regard to the fact that in respect of the most significant discrepancy, that pertaining to the year 2010-11, the Respondent had a "lot on his mind". His wife was pregnant

and had been diagnosed with gestational diabetes. When his son was born, in December 2011, he had jaundice and then pneumonia. In the years that followed the child was diagnosed with severe autism and ADHD. The Tribunal further weighed in the balance the fact that HMRC had imposed no penalty upon the Appellant but had attributed the error to his “failure to take reasonable care” with his tax affairs. The Tribunal accepted the evidence that the errors had only come to light when the Respondent had come to fill out an application for a mortgage in 2016. Having weighed all of those factors in the balance the Tribunal concluded that the Secretary of State had not discharged the burden of proof and allowed the appeal.

Discussion and Findings

7. The Secretary of State challenges the decision of the First-tier Tribunal on the ground that there has been material misdirection in the Tribunal placing significant, if not sole, emphasis on the fact that HMRC applied no penalty: reliance is placed on the decisions in R (oao Samant) v Secretary of State for the Home Department JR/6546/16 and R (oao Abbasi) v Secretary of State for the Home Department JR/13807/16.
8. There is nothing in that ground for three reasons. First, the decisions cited are both judicial reviews in which the function of the Tribunal is quite different. In Samant and Abbasi the ‘no penalty’ point was not sufficient to demonstrate the decision of the Secretary of State to be irrational. That does not prevent the First-tier Tribunal taking it into account in a rounded assessment of the evidence in a statutory appeal. Second, the evidence was not simply that the HMRC had decided to impose no penalty: they had expressly indicated that they ascribed the under-declaring to a lack of care. Third, and more importantly, this was not, as the grounds assert, the sole or even primary reason why the decision is as it is. The Tribunal gave several reasons for finding that the burden was not discharged, and in its rounded assessment the innocent explanation of the Respondent was credible and reasonable.
9. Before me Mr Bramble sought to expand the grounds to submit that properly analysed the determination may be unimpeachable in respect of the 2010-11 discrepancy, but that it failed to make clear whether its findings also covered the later discrepancies. Although this point was not argued in the grounds I am prepared to deal with it. The Tribunal makes clear, at its paragraph 46, that it did not consider it necessary to set out all of the figures etc in greater detail because the evidence presented by the Respondent was woefully inadequate: “there was, in essence, no evidence at all put forward by the Respondent to show any dishonesty on Mr Billapati’s part”. Further the later discrepancies were not, as Mr Gajjar rightly submits, in themselves so significant that the Secretary of State could even rely upon them to discharge the evidential

burden: for the year 2012-13 the difference eventually paid in tax was £123.25; for the year 2013-14 it was £786.17.

10. In the circumstances I find no error of law and uphold the decision of the First-tier Tribunal.

Decisions

11. The decision of the First-tier Tribunal contains no error of law and it is upheld.
12. There is no direction for anonymity.

Upper Tribunal Judge Bruce
8th March 2019