



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01804/2019

THE IMMIGRATION ACTS

Heard at a remote hearing via Skype
On 11 March 2021

Decision & Reasons Promulgated
On 19 March 2021

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NOORALI CHARANIA

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer

For the Respondent: Mr Sharma, Counsel

DECISION AND REASONS (V)

Introduction

1. The appellant ('the SSHD') has appealed against a decision of First-tier Tribunal ('FTT') Judge Isaacs, promulgated on 8 November 2019, allowing Mr Charania's appeal against a decision dated 10 January 2019 refusing his human rights claim.

Background

2. Mr Charania is a citizen of India who arrived in the United Kingdom ('UK') as a student in 2007. He has been continuously lawfully resident in the UK since that time. His application for indefinite leave to remain ('ILR') based upon his long residence pursuant to 276B of the Immigration Rules, dated 1 June 2006, was refused for one reason only. In short, the SSHD considered that Mr Charania had been dishonest in an earlier application for leave to remain in March 2013 (when he relied upon an income of some £50,800, including £18058.49 PAYE employment and £32,773.65 self-employment and / or when he submitted his HMRC tax return for the corresponding tax year ending 2013 (when he declared £0 income), and refused his application under the 'general grounds for refusal' at paragraph 322(5) of the Immigration Rules.
3. This is therefore an 'earnings discrepancy' case. In this case the SSHD acknowledged that Mr Charania revised his tax calculation for 2013 on 17 November 2016 but considered that the delay in correcting his HMRC declaration demonstrated little intention of correcting the errors promptly and little respect for the UK's tax laws.
4. The FTT considered documentary and oral evidence and accepted that Mr Charania was generally credible. The FTT concluded that he had not engaged in dishonest conduct and allowed his appeal on Article 8 grounds, on the basis that he met the requirements of the relevant Immigration Rules.

Appeal to the UT

5. The SSHD appealed against the FTT's decision on two grounds, with permission having been granted by FTT Judge Parkes on 8 April 2020. Mr McVeety relied upon the grounds of appeal and written submissions dated 23 July 2020. Mr Sharma relied upon a rule 24 notice / skeleton argument dated 8 March 2021. Although Mr Sharma did not have the SSHD's written submissions, these were sent to him before Mr McVeety's submissions began and he was given an opportunity to consider them prior to making his submissions. Mr Sharma confirmed that he had sufficient time to address these. Both representatives relied mainly upon their respective written submissions; their oral submissions were brief.
6. I now address the grounds of appeal, the rule 24 notice and the respective submissions before me.
7. The FTT clearly concluded at [42] that Mr Charania did not act dishonestly, having applied the principles in Balajigari v SSHD [2019] EWCA Civ 673 at [41]. The reasons for this conclusion are to be found at [37] to [40] and are three-fold. First, the FTT found Mr Charania to be generally credible and consistent as to why he put the figure of zero in his 2013 tax return, which was inaccurate. Second, the claim in his 2013 tax return that he received zero income was clearly inaccurate because HMRC confirmed that he received some £18,000 from his PAYE employment with Marriott hotels that tax year. The FTT was satisfied that at the time of placing zero for his income in the 2013 tax return "he was

making a placeholder rather than putting this as a genuine figure". Third, Mr Charania was generally disorganised in his tax affairs.

8. I pause here to observe that the FTT also noted that the procedure adopted by the SSHD did not afford Mr Charania the opportunity to explain the anomaly in his tax return, in breach of the SSHD's own guidance on procedural fairness. I accept Mr Sharma's submission that this was simply a remark that played no material role in the credibility findings. As Mr Sharma observed the full merits appeal before the FTT corrects the defects of justice identified in Balajigari – see Ashfaq (Balajigari: appeals) [2020] UKUT 226 (IAC). It follows that I do not consider that the SSHD has made out ground 2, and the FTT's observation at [41] does not constitute a material error of law.
9. I now return to the SSHD's ground 1 wherein it was submitted that the FTT's reasoning did not address the SSHD's fundamental concerns regarding Mr Charania's evidence as articulated in the decision letter, by way of cross-examination and in the submissions on behalf of the SSHD. These clearly indicate that the SSHD was of the view that Mr Charania failed to explain why he did not use an accountant at the time of his 2013 tax return or why he delayed in excess of three years before correcting the inaccurate declaration that he earned zero income in the tax year ending 2013.
10. Although the FTT found Mr Charania to be generally credible in that he gave consistent evidence at [37], the FTT demonstrably appreciated the need to explain why he was found to be credible and sought to do so by making two additional points at [39] and [40]. I am satisfied that notwithstanding the findings at [37] to [40], fairness demanded that the FTT was required to address two of the SSHD's key concerns regarding the credibility of Mr Charania's evidence: (i) his explanation for not using an accountant for his 2013 tax return; (ii) his explanation for the delay of some three years in correcting the 2013 tax return. I entirely accept that it is unnecessary for FTT decisions to rehearse every detail or issue raised by the parties. It is however necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms so that parties can understand why they have won or lost. In my judgment the SSHD has not been provided with tolerably clear reasons why the FTT was prepared to accept Mr Charania's evidence in these two key respects.
11. Mr Sharma correctly submitted that there was nothing in law to require an individual to engage an accountant when completing his or her tax return. However, that misses the point made by the SSHD. Mr Charania submitted his initial 2013 tax return in November 2013 [E2 of the Home Office bundle]. He had relatively recently (as part of his Tier 1 application for further leave to remain dated 10 June 2013) employed the services of an accountant, who provided him with a letter and accounts [C4-C6 of the HO bundle]. The proposition advanced by the SSHD was that Mr Charania's explanation that he was too stressed / emotionally drained to use an accountant for his 2013 tax return was inconsistent with the fact that a few months earlier he used an

accountant for his immigration application. The immigration application demanded evidence from an accountant to evidence self-employment. The tax return did not require anything from an interpreter. However, the appellant offered no explanation for not using an accountant (at a time when he said he was stressed and busy) when he plainly had access to one who was familiar with his self-employment.

12. Mr Sharma's written submissions asserted that this concern was not put to Mr Charania during cross-examination on the basis that this has not been recorded by the FTT at [19] to [24]. Mr Sharma was prepared to accept that the judge's record of proceedings included a question on this issue, which I read out for the benefit of the representatives: "Q Why not use an accountant? A: I should have but I didn't. I got an accountant's help to prepare amended self-assessment....". This is also a point that was specifically relied upon in submissions (see [26] of the FTT's decision). The FTT did not engage with this at all when giving its reasons.
13. Perhaps more significantly, the FTT gave no reasons for rejecting the SSHD's submission in the decision letter and repeated at the hearing that "the delay of several years in correcting your declarations to HMRC, shows that you had little intention of correcting the errors promptly and as such, have little respect for the United Kingdom (UK) tax laws". The record of proceedings demonstrates that questions were put in cross-examination on the delay issue: "Q: Why did it take you until 2016 to correct it? A: I had to get my head around it not to make mistakes. Q: But you did not do it immediately? A: No. I just wasn't in the mental frame." This is summarised at [21] of the FTT's decision. I note Mr Charania's own evidence before the FTT that he continued to work on a full-time basis at all material times and the absence of any evidence that his "mental frame" adversely impacted other parts of his working life, other than his tax arrangements. I also invited Mr Sharma to take me to the evidence before the FTT to explain what triggered Mr Charania to amend the 2013 tax return some three years later in 2016. He took me to B1 of the Home Office bundle in which Mr Charania was pointing out in 2017 that his amendment of the 2013 tax return in 2016 was 'unprompted'. I note that his response to the SSHD's tax questionnaire [D4 of the Home Office bundle] suggests that the error in the tax return was pointed out by his accountant. Mr Sharma submitted that it was open to the FTT to accept the explanation that he was not in a mental state to complete the 2013 tax return and was "making a placeholder" with a view to correcting the tax return at a later point. That was indeed the clear finding of the FTT. However the FTT's reasoning is entirely silent on what was perhaps *the* key concern on the part of the SSHD - there was no credible explanation for a delay of three years in correcting the tax return. In my judgment it was incumbent upon the FTT to provide at least brief reasons as to why it accepted the evidence that Mr Charania was so overwhelmed by personal matters that he forgot to declare and pay his tax until 2016, and to engage with what triggered the amendment to the 2013 tax return in 2016, particularly in the light of the SSHD's asserted chronology of events at [7] of the

written submissions (and in the chronology within the decision letter). As set out in R (Khan) v SSHD (Dishonesty, tax return, paragraph 322(5)) [2018] UKUT 384 (IAC) when considering whether or not an individual was dishonest or merely careless the decision-maker must consider the stage at which the individual took steps to remedy the situation and the explanation for any significant delay, as well as the extent to which this is evidenced (as opposed to asserted).

Conclusion

14. The failure to adequately reason its credibility findings call into question the FTT's ultimate conclusion that there was not the requisite dishonest conduct to engage paragraph 322(5). It is not in my judgment realistically possible to construct what the judge's view of the appellant's explanation might have been if those errors had not been made. The findings of fact are infected by material errors of law.

Disposal

15. The findings of fact need to be remade de novo. I am satisfied that the relevant Practice Statement and overriding objective support a remittal to the FTT.
16. This is a case in which the FTT would be assisted by an agreed chronology that cross-references to the relevant documents in an agreed consolidated bundle and I have made that direction below. Upon remittal the FTT can consider that chronology with a view to making appropriate case management directions. The SSHD sought to place reliance upon the suspicious timing of the 2016 amendment to the 2013 tax return. It is important to have a full chronology for the period 2013 to 2017 and all the relevant documentation for that period. The papers available to the FTT did not appear to have the original 2013 tax return or the documents relevant to the first ILR application or the documents / evidence that triggered the 2016 amendment to the 2013 tax return.

Decision

17. I allow the appeal and set aside the FTT decision. The matter is remitted to a FTT judge other than FTT Judge Isaacs.

Directions

- (1) Within 21 days of the date this decision is served the appellant shall file and serve an agreed (if possible) consolidated bundle containing an agreed (if possible) chronology that cross-references to page numbers within the consolidated bundle.

Signed: *Ms M Plimmer*
Upper Tribunal Judge Plimmer

Dated: 12 March 2021