



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/03568/2020 (V)

THE IMMIGRATION ACTS

**Heard at : Field House
On : 3 February 2022**

**Decision Promulgated
On 15 March 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

WAHIDAH KHANAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person (by video link)

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a hybrid hearing, with the appellant joining remotely via Microsoft Teams, at her request, and Mr Melvin appearing in person. There were no problems during the hearing and the appellant confirmed that she understood everything and was able to participate fully in the proceedings.

2. The appellant has been granted permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision of 20 February 2020 refusing her application for indefinite leave to remain on the basis of ten years long residence and her human rights claim.

3. The appellant is a citizen of Pakistan, born on 25 August 1980. She entered the UK on 3 September 2006 with leave to enter as a student valid until 31 December 2007 and was granted further periods of leave as a student and then as a Tier 1 Highly Skilled Migrant until 16 April 2011. On 5 April 2011 she applied for further leave to remain as a Tier 1 Highly Skilled Migrant and was granted leave until 8 August 2013. On 12 July 2013 she applied for further leave to remain as a Tier 1 Highly Skilled Migrant and was granted leave until 20 August 2016.

4. On 10 August 2016 the appellant applied for indefinite leave to remain as a Tier 1 General Migrant and on 9 May 2017 she varied that application to indefinite leave to remain on the basis of ten years' continuous lawful residence in the UK. That application was refused on 20 December 2017 under paragraph 322(5) of the immigration rules, on the basis that her conduct made it undesirable for her to remain in the UK owing to inconsistencies between the income from self-employment she had declared to HMRC and the earnings she had claimed in her two previous Tier 1 general migrant applications, made on 5 April 2011 and 12 July 2013. The respondent rejected the appellant's explanation that errors had been made by her previous accountant and concluded that she had been deceitful or dishonest in her dealings with HMRC or UKBA.

5. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Grimmett on 22 June 2018. Judge Grimmett considered the appellant's explanation for the errors in her tax returns lodged for the years ended April 2011, April 2013 and April 2014, which was based upon personal issues experienced from 2010 including the fact she had been suffering from acute depression, that her mother had passed away in 2012, that she had been travelling backwards and forwards to Pakistan to deal with various matters, that her first husband had divorced her and had hacked her documents so that she lost all her financial and business documents, and that her new mother-in-law from her marriage in 2013 had become ill and died in March 2014. The appellant also explained that she had appointed a new accountant by the end of 2015, her previous accountants having submitted tax returns in her absence and had amended the previous tax returns and paid the outstanding tax. Judge Grimmett rejected the appellant's explanation, noting the lack of evidence that the appellant had used accountants to file her tax returns or that any accountants used had acted negligently. She concluded that the appellant had been dishonest and that paragraph 322(5) applied. She considered further that the respondent's decision was proportionate and did not breach the appellant's human rights in relation to her family life with her husband and son.

6. Permission was granted to the appellant to appeal Judge Grimmett's decision on the basis that it was arguable that the judge had "*failed to engage with the argument advanced on behalf of the appellant that paragraph 322(5) of the immigration rules did not apply to situations involving underdeclared income.*" However, the Upper Tribunal, in a decision promulgated on 15 February 2019, rejected that argument and upheld Judge Grimmett's decision.

7. The appellant became appeal rights exhausted on 29 April 2019.

8. On 28 March 2019 the appellant made a further application for indefinite leave to remain on the grounds of ten years' continuous lawful residence in the UK, on the same basis as previously, asserting that she had not acted dishonestly, that she was of good character and that she had completed ten years of continuous lawful residence in the UK. Additional evidence was submitted, which included a letter from S&M Accountants, dated 11 March 2019, confirming that they had acted as her accountants and, having been unable to contact her due to her absence from the UK, had filed her tax returns in her absence with incomplete data in order to avoid a penalty for late filing. Also included was a letter from First Migration dated 20 October 2018 confirming the advice they gave to her when previously applying on her behalf for her visa extensions in regard to checking her tax returns and accounts and ensuring that her tax issues were resolved.

9. In a letter of 10 December 2019, the respondent advised the appellant that she was minded to refuse her application on the grounds that false representations had been made. The respondent's concerns were put to the appellant and she was invited to respond. Her solicitors responded on her behalf in a letter dated 20 December 2019, in which the same explanation was provided, and it was claimed that she was a "person of law-abiding nature". It was also claimed that she had established a family life in the UK, that she had a child born in the UK, and that her removal would be in breach of Article 8 of the ECHR.

10. In a decision dated 20 February 2020 the respondent rejected the appellant's explanation for the discrepancies between the amounts declared to HMRC and the earnings claimed in her Tier 1 applications. The respondent noted that the fresh evidence in the form of a letter from S&M Accountants raised further discrepancies and concluded that the appellant had made false representations in relation to her past earnings and that paragraph 322(5) accordingly applied. The respondent considered that the appellant could not meet the requirements of paragraph 276B of the immigration rules on the basis of ten years' continuous lawful residence in the UK. The respondent was, furthermore, not satisfied that the appellant could meet the requirements in Appendix FM or paragraph 276ADE(1) on the basis of her family and private life or that there were any exceptional circumstances outside the immigration rules. Her application was refused in a decision dated 20 February 2020.

11. The appellant appealed against that decision and her appeal was heard in the First-tier Tribunal on 17 May 2021 by Judge Aziz. The judge took Judge Grimmett's decision as his starting point and considered the new documentary evidence as well as the oral evidence of the appellant and her husband. Judge Aziz found that the appellant was essentially seeking to re-litigate the same grounds as previously, raising the same explanations behind the errors in her tax returns as had been considered by Judge Grimmett. Judge Aziz found that the additional documents, namely the letter from S&M Accountants, dated 11 March 2019, and the letter from First Migration, dated 20 October 2018, revealed further discrepancies and anomalies in the appellant's account, including details as to the timing of the filing of the tax returns and the dates of her absences from the UK. The judge considered that the letter from S&M

Accountants contradicted the appellant's evidence at the previous hearing and he accorded little weight to the document. He found that the letter from First Migration did not assist the appellant and, if anything, undermined her case. He concluded that there was nothing in the new documentary evidence that would allow him to depart from Judge Grimmett's findings and he concluded that the appellant's application was properly refused under paragraph 322(5). The judge then considered the appellant's Article 8 claim, in particular the evidence provided in relation to her son who suffered from delayed speech and language development. He concluded that there were no very significant obstacles to integration in Pakistan and that the appellant's removal from the UK would be proportionate. The judge accordingly dismissed the appellant's appeal.

12. The appellant sought permission to appeal to the Upper Tribunal. Her grounds, in summary, were that the judge had arguably failed to have regard to whether the two new items of documentary evidence would have resulted in a different decision had they been before Judge Grimmett or before the Upper Tribunal when it upheld Judge Grimmett's decision. Further, that the judge had arguably failed to give reasons for rejecting the appellant's husband's evidence about the best interests of their child, had failed to consider that the child was only three months short of meeting the requirements of paragraph 276ADE(1) (iv) and had failed to take account of all relevant factors in considering the best interests of the child.

13. Permission to appeal was granted by the First-tier Tribunal on the following basis:

"I will grant permission, not because I have any belief that the judgment is tainted or impeachable, but that there are a number of issues raised that cannot properly be dealt with at a permission stage without access to all of the documents, the previous judgment of the Upper Tribunal and the previous First tier judgment.

Permission is granted on all matters raised in the grounds settled by Counsel dated 11 June 2021."

14. The matter then came before me. Mr Melvin made submissions. The appellant responded, reiterating her claim that she had not acted fraudulently but had paid her tax late because of various problems. Her son was now seven years of age and was able to remain in the UK on that basis. She could not return to Pakistan now as it would be difficult to live there having been in the UK for 16 years.

Discussion

15. It is relevant to note that the only basis for permission having been granted in relation to the earlier appeal before Judge Grimmett was on the question of whether paragraph 322(5) applied to situations involving underdeclared income. However, it was conceded on behalf of the appellant at the hearing before the Upper Tribunal that it did. The other grounds,

challenging the rationality of Judge Grimmett's findings, were rejected by the Upper Tribunal.

16. The appellant's case before Judge Aziz was the same as that before Judge Grimmett. As Judge Aziz said at [52] of his decision, the appellant was essentially seeking to re-litigate the same grounds as previously and raising the same explanations for the discrepancies in her declared income. The only difference between the case before Judge Grimmett and the case before Judge Aziz was that the appellant had produced the additional documentary evidence. However, as Judge Aziz found at [64], the documentary evidence did not assist the appellant but served only to undermine her credibility further. At [56] to [61] he identified a number of discrepancies and contradictions in the evidence which were raised by the letter from S&M Accountants and, at [62] to [63], he observed that the letter from First Migration simply showed that the appellant was advised on several occasions by her previous representatives to check that her tax payments were in order. Accordingly, rather than being assisted by the additional documentary evidence if it had been before Judge Grimmett, the appellant's case would have been undermined even further. There is therefore no merit in the appellant's grounds relating to the new evidence.

17. As for the appellant's submission before me, that she had done nothing fraudulent and had resolved the tax issue by paying all her taxes, that was simply a re-statement of the explanation she had provided in her two appeals and which both judges had properly rejected. It was clearly not simply a matter of tax being paid late, but of a false declaration having been made by the appellant in the first place, which entitled the respondent to refuse her application under paragraph 322(5) of the immigration rules. Judge Aziz, like Judge Grimmett was perfectly entitled to uphold the respondent's decision in that respect.

18. As for the grounds relating to the appellant's Article 8 claim, they are essentially nothing more than a disagreement with the judge's findings and conclusions and an attempt to re-argue the case, and they do not identify any errors of law made by the judge. The appellant asserts that Judge Aziz ought to have given reasons why her husband's explanation as to the best interests of their son remaining in the UK was accepted or rejected. However, the judge did provide such reasons at [73], when setting out his findings as to why the evidence from the appellant and her husband was not credible in regard to their son's ability to speak Urdu. The appellant's grounds at [10] to [13] seek to challenge the judge's findings on "very significant obstacles to integration" in relation to their son and his best interests, but that was a matter addressed in detail by the judge from [68] onwards, with full and cogent reasons given as to why the child's best interests were outweighed by other factors both within and outside the immigration rules. As for the matter of the appellant's son having fallen short by only three months of the seven years required under paragraph 276ADE(1)(iv), the judge was required to consider the circumstances at the date of the hearing, which is what he did. In any event paragraph 276ADE(1)(iv) also required the appellant to show that it would be unreasonable to expect

her son to leave the UK, whereas it is clear from the judge's findings, in particular at [83], that he concluded that that had not been demonstrated.

19. For all of these reasons, the appellant's grounds of challenge have no merit. I have to agree with Mr Melvin that it is not clear why permission was granted in the first place as the grounds are evidently not even arguable. The judgments of Judge Grimmett and the Upper Tribunal which upheld her decision do not assist the appellant, but undermine her case. Judge Aziz was fully and properly entitled to reach the conclusions that he did and to dismiss the appeal on the basis that he did. There are no errors of law in his decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 3 February 2022