



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: HU/12110/2019**

**HU/12112/2019**

**HU/12107/2019**

**THE IMMIGRATION ACTS**

**Heard Remotely by Microsoft Decision & Reasons Promulgated  
Teams**

**On the 21<sup>st</sup> September 2021 and  
15<sup>th</sup> October 2021**

**On the 23<sup>rd</sup> March 2022**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**QASIM HABIB (1)  
AMBREEN SAJAD (2)  
SHAZNEED QASIM (3)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Gajjar, instructed by the appellants, Direct Access

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer  
(21.09.21)

(15.10.21) Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## Background

1. The appellants are nationals of Pakistan. The first and second appellants are husband and wife. They are the parents of the third appellant. They appealed the respondent's decision of 2<sup>nd</sup> July 2019 to refuse their application for leave to remain in the UK. First-tier Tribunal Judge Randall dismissed the appeals for reasons set out in a decision promulgated on 26<sup>th</sup> February 2020. The decision of Judge Randall was set aside for reasons set out in my 'error of law decision' decided under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and promulgated on 14<sup>th</sup> October 2020. At paragraph [12] of that decision I said:

“As to disposal, I note that the discrepancies regarding the income declared by the first appellant in the tax returns to HMRC for the years 2010/11 and 2012/13 and that claimed by the first appellant in his applications for leave to remain as a Tier 1 migrant in March 2011 and November 2013 were previously considered by First-tier Tribunal Judge Woolley in a decision promulgated on 8<sup>th</sup> August 2018. The appellants rely upon further evidence that they claim is sufficient to depart from the decision of Judge Woolley. As the issues to be determined by the Tribunal are limited, in my judgement the appropriate course is for the decision to be remade in the Upper Tribunal.”

2. The matter was listed for a resumed hearing before me on 21<sup>st</sup> September 2021. Neither party raised any concern about my decision to determine the 'error of law' on the papers under Rule 34. The resumed hearing took the form of a remote hearing using Microsoft Teams. Neither party objected to a remote hearing. I heard evidence from the first appellant and submissions from Mr McVeety and Mr Gajjar. At the end of the hearing I reserved my decision and informed the parties that my decision would follow in writing. When considering the appeal, I noted that there were gaps in the evidence and unexplained anomalies in the documents before me that in fairness, the parties should have an opportunity to address. I directed that the matter be listed for a further hearing before me on 15<sup>th</sup> October 2021 at which I will hear any further evidence from the appellant and any further submissions the parties wish to make regarding the first appellant's application for leave to remain as

a Tier 1 Migrant on 8<sup>th</sup> November 2013 and the amendment made to the first appellant's tax return for the period 2013/14.

3. The first appellant joined both hearings remotely and was able to follow the hearings throughout. On 21<sup>st</sup> September 2021 I sat at the Birmingham Civil Justice Centre. On 15<sup>th</sup> October 2021, I sat at Field House. On both occasions, I heard evidence from the first appellant, who did not require the assistance of an interpreter. I was addressed by the representatives and the hearings were conducted in exactly the same way as they would be if the parties had attended for a face-to-face hearing. I was satisfied that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing to avoid further delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, and the complexity of the issues that arise. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

#### The background

4. The first appellant arrived in the UK in December 2005 with entry clearance as a student valid until 31<sup>st</sup> March 2009. In March 2009 he made an in-time application for leave to remain as a Tier 1 Migrant. He was granted further leave to remain until 9<sup>th</sup> April 2011. On 24<sup>th</sup> March 2011, he applied for further leave to remain as a Tier 1 Migrant. His application was refused by the respondent, but the first appellant successfully challenged that decision. An appeal was allowed by the First-tier Tribunal on 29<sup>th</sup> September 2011, and he was granted further leave to remain until 11<sup>th</sup> November 2013. There was an unsuccessful attempt by the respondent to curtail that leave to remain. On 8<sup>th</sup>

November 2013, the appellant applied for further leave to remain as a Tier 1 migrant, and he was granted further leave to remain until 8<sup>th</sup> April 2017. The second appellant arrived in the UK on 26<sup>th</sup> May 2014 as a dependent of the first appellant, with a visa valid until 8<sup>th</sup> April 2017. The third appellant was born in the UK on 13<sup>th</sup> January 2015. On 2<sup>nd</sup> December 2015, the first appellant applied for leave to remain under the 'long residence' rules. That application was refused by the respondent in February 2016. On 21<sup>st</sup> March 2017, the first appellant applied for indefinite leave to remain under the long residence rules. That application was refused by the respondent on 6<sup>th</sup> February 2018. The appellant's appeal against that decision was dismissed for reasons set out in the decision of First-tier Tribunal Judge Woolley, to which I will return shortly. On 18<sup>th</sup> December 2018 the appellants applied for leave to remain in the UK on the basis of the first appellant's long residence and on Article 8 grounds. It is the respondent's decision of 2<sup>nd</sup> July 2019 to refuse that application, that is the subject of the appeal before me.

5. Because it is relevant to my decision, I refer to the decision of Judge Woolley promulgated 8<sup>th</sup> August 2018, following the refusal of the previous application made on 21<sup>st</sup> March 2017. The first appellant attended the hearing before Judge Woolley and was represented by counsel. Judge Woolley heard oral evidence from the first appellant and a witness called by him. Judge Woolley's findings and conclusions are set out at paragraphs [16] to [46] of his decision. Judge Woolley referred to the immigration history of the appellants and accepted that on the face of it, the first appellant had accrued 10 years continuous lawful leave. The issue before Judge Woolley was the respondent's reliance upon the discretionary ground for refusal set out in paragraph 322(5) of the immigration rules. At paragraph [20] of his decision Judge Woolley said:

"20. The "character" and "conduct" that the respondent points to here is the discrepancy between the figures supplied to the Home Office in respect of earnings under the Tier 1 applications in 2011 and 2013, and the figures supplied to HMRC for the comparable tax years ending April 2011 and 2013. There is a marked discrepancy between the two: in respect of 2011 he

stated to the Home Office that he had earned £40,080 between 1<sup>st</sup> June 2010 and 28<sup>th</sup> February 2011, and yet to the HMRC he declared earnings of only £10,693.98 for the whole year. I bear in mind the point raised under 276B(i): for this application he had to appeal and produce accountants records and so he would have been alive to the figures. In respect of 2013 there is also a discrepancy, although the periods of earnings are different. He claimed to the Home Office that he earned £39,798 between 1<sup>st</sup> October 2012 to 1<sup>st</sup> September 2013, whereas to HMRC he said that in the tax year to April 2013 he earned only £8,834....”

6. At paragraphs [21] to [24] of his decision, Judge Woolley stated:

“21. I heard evidence from the appellant himself. I found him not to be a credible witness. He accepted in questions put by Ms Bowden that he had expected his annual earnings in 2011 and 2013 to be some £40,000 and £35,000 respectively and yet he did not question the fact that HMRC did not request any tax from him. He says that he was under stress when he put the tax figures in - on the first occasion he had just been released from detention centre (*sic*) and had no documents with him, while on the second occasion he submitted the return from hospital. He accepted however that he had used accountants’ letters for both his Tier 1 applications, yet said that he had not used them when submitting the tax returns because of the cost. This explanation ignores the reality that, irrespective of accountants, he would have been alive in both 2011 and in 2013 to the figures he was putting to the Home Office because he had had to make applications for Tier 1 visas in both years. It is not credible that when it came to putting in the tax returns he should ignore the voluminous documentation that must have been available in respect of the Tier 1 applications.

22. Further questioning only tended to increase the obfuscation. He said that he had wrongly brought forward expenses from 2012 to 2011 which reduced the amount earned. There is no documentary support for this from any accountant, and even if it had been brought forward it amounted only to some £6000 which goes nowhere near the figure quoted to the Home Office. The appellant said he found out he got the tax returns wrong when he was sorting through some old documents and found some invoices; from these he amended the tax returns for both years. I reject this explanation as he must have had the figures produced to the Home Office very much in mind nearer the time when he was preparing his Tier 1 applications. I find that he was only prompted to correct the figures when he received the Home Office letter of refusal in February 2016. At times it was hard to accept that he himself believed that the figures he had produced to the Home Office for the Tier 1 applications could be correct - he said in respect of the tax year ending April 2011 that he worked weekends at Pizza Hut (earning £4013 that year) and worked five days a week nine months of the year from his self-employment and yet only earned £6,680 from this. And yet over the same period he claimed to the Home Office that his monthly earnings were well over £3,000 (£40,080 per annum).

23. On the basis of this evidence it is hard to say where the truth really lies. He may have manipulated one set of figures up and one set of figures down. Or truly stated one set while inflating the other set - or he may have done a combination of both. What can be said is that the figures provided to the Home Office and the figures provided to HMRC cannot both be correct.

One of the sets of figures must be false and the appellant is not credible when he says he believed both of them to be true. There is moreover no evidence of the appellant going back to the Home Office to correct the figures he had provided if he realised they were wrong. On the contrary, a great deal of energy went into persuading the Home Office and the Tribunal that the Tier 1 figures were correct. I find in short that the appellant has manipulated the figures to provide on the one hand satisfactory financial accounts for the Tier 1 applications, and on the other to provide figures to minimise his tax burden. The argument that he later went back to HMRC to correct the account only meets half of the problem - there is no evidence that he ever went back to the Home Office to correct the figures supplied to them. And yet in evidence he accepted that his true earnings were much lower.

24. The question then arises whether this is conduct that engages Paragraph 276B(ii) and (iii). I find that it meets both. Firstly, looking at 276B(ii) on its own terms it can be said to be undesirable to allow a person who has manipulated the figures to his own advantage to be allowed to remain, or alternatively has minimised the figures so as to evade his proper tax liability. This is particularly so, since if the more credible figures for earnings are at the lower level then he would never have been granted leave under Tier 1 on appeal in 2011 or on application in 2013. He could never then have accrued 10 years lawful and continuous residence. This very much bears on the point of 276B(ii) and the overall scheme of the section. In respect of 276B(iii) and 322(5) I accept that Para 322(5) does not mandate a refusal. Nevertheless applications are usually to be refused if this is engaged. I find that the appellant's behaviour over a sustained period of time does call into question his character and conduct. Had this happened once then the appellant might plausibly say this was a mistake - but as it has happened twice I find that this was not a mistake but a deliberate action. I find that the respondent has discharged the burden of proving dishonesty and that this is more than just a mistake."

7. Judge Woolley found the first appellant does not meet the requirements of paragraph 276B of the immigration rules. He went on to address the requirements for leave to remain in the UK set out in Appendix FM and paragraph 276ADE of the immigration rules. He found that the appellants do not qualify for leave to remain on the basis of any private and family life under the immigration rules. He accepted the appellant's do have a private and family life in the UK and at paragraph [46] he concluded:

"46. Putting all the factors into the balance, I find that the interests of the appellants and their family in the UK do not outweigh the interests of immigration control. I find that the balance does not come down in favour of those rights as against the principle of legitimate immigration control. I find that the hardship consequent on refusal of leave to remain does not go far enough beyond the baseline to make removal a disproportionate use of lawful immigration controls. The appellants can reasonably be expected to

return to Pakistan where they could continue their life. I have found it reasonable for the child to return with him and his wife. Any obstacles or difficulties in removal do not go beyond matters of choice or inconvenience. I find that the interference with the appellant's right to a private and family life is not of such a level as to breach those rights and that the decision to refuse leave to remain is therefore proportionate under Article 8 of the European Convention. There will be no unjustifiably harsh consequences for the appellant, his wife and child returning to Pakistan. GEN.3.2 does not therefore apply so as to create a general dispensation from the requirements of Appendix FM."

8. The appeal was dismissed by Judge Woolley. For the sake of completeness I note that permission to appeal to the Upper Tribunal was refused by First-tier Tribunal Judge Swaney on 13<sup>th</sup> September 2018 and by Dr H Storey on 6<sup>th</sup> December 2018. The appellant was refused permission to claim judicial review of the decision of the Upper Tribunal to refuse permission to appeal, by Sir Ross Cranston on 27<sup>th</sup> February 2019.
9. The issues in the appeal before me are outlined in the appellants' skeleton argument settled by Mr Gajjar and dated 2<sup>nd</sup> February 2020. They are:
  - i) Whether the appellant has put forward evidence that allows the Tribunal to depart from the determination of FtT Judge Woolley dismissing his appeal and whether that evidence constitutes an innocent explanation against the minimum/basic level of plausibility;
  - ii) Whether, in the alternative, discretion should be exercised in their favour;
  - iii) Whether the appellants' removal from the United Kingdom would be disproportionate
  - iv) Whether removal would be hostile to the best interests of the children.

### The evidence

10. I have been provided with a comprehensive bundle from the appellant with sections A to G, which Mr Gajjar confirmed at the outset, contains all the evidence relied upon by the appellants and the documents that I would need to have regard to in reaching my decision. I also have the respondent's bundle. At the two hearings before me, I heard evidence

from the first appellant. He did not require the assistance of an interpreter.

### The first appellant's evidence

11. The first appellant has made three witness statements that are all to be found in section A of the appellants' bundle. The first is an undated and unsigned witness statement that is to be found at pages A17 to A21. It bares the appeal reference 'HU/05280/2018' and was made in response to the respondent's decision of 6<sup>th</sup> February 2018, in readiness for the hearing of the appeal before First-tier Tribunal Judge Woolley previously. Nevertheless, the first appellant confirmed the content of that statement is true and correct. The second statement is dated 20<sup>th</sup> May 2019 and is to be found at pages A11 to A16. The third statement is dated 27<sup>th</sup> October 2019 and is signed electronically. It is to be found at pages A1 to A10 of the appellants' bundle. The first appellant confirmed the contents of those two statements are also true and correct.
12. I do not repeat the content of the unsigned and undated witness statement (*at pages A17 to A20*) in this decision. Its content was considered by Judge Woolley previously, but for the avoidance of any doubt, I have read what is said by the appellant in that statement. He confirms that on 2<sup>nd</sup> December 2015, he made an application for indefinite leave to remain via the premium service. He states the application was refused because of a mistake on his tax returns. Although he had a right of appeal, he did not appeal the decision, but made a fresh application "*with a clear head to enable [him] to amend [his] tax returns*".
13. In his witness statement dated 20<sup>th</sup> May 2019, the first appellant claims it would be very difficult for his family to return and re-establish their life in Pakistan. He confirms both his children were born in the UK and neither have visited Pakistan previously. He claims there is no one in Pakistan to support them financially or to assist with accommodation. He confirms



his eldest daughter was born on 13<sup>th</sup> January 2015, prematurely, and spent the initial 56 days of her life in a neonatal unit and has been in and out of hospital numerous times. She has continuously been treated for asthma since January 2019. She began attending school in September 2017 and is developing well. He claims the pending and ongoing delays in resolving their immigration status has affected the family mentally and emotionally. He acknowledges that a previous application for indefinite leave to remain was refused by the respondent and an appeal against that decision was dismissed by Judge Woolley. However, he reiterates that he did not intend to deceive the respondent or HMRC at any point, and he maintains that he is an honest, genuine and hard-working individual.

14. In his witness statement dated 27<sup>th</sup> October 2019, the first appellant summarises his immigration history and in paragraphs [2] to [14] he deals with the Tax Returns submitted to HMRC for the years 2010/11 and 2013/14. He again confirms that he has never deceived/intended to deceive either HMRC or the respondent in relation to his income. He maintains that he did not over-declare his income in order to seek leave to remain when he made his applications to the respondent in March 2011 and November 2013. He claims that in 2013, the respondent not only relied upon documents that were provided in support of the application, but also made contact with some of his clients in order to confirm that he had genuinely worked for them, in a self-employed capacity.
15. The first appellant claims the tax return for the period 2010/11 was one that he completed himself. He explains that the tax return for that period was due to be filed between 6<sup>th</sup> April 2011 and 31<sup>st</sup> January 2012. He states he was arrested and detained by the respondent on 20<sup>th</sup> June 2011 and was told that his application for leave to remain as a Tier 1 migrant, made on 24<sup>th</sup> March 2011, had been refused. As that decision did not carry a right of appeal, the decision was challenged by way of judicial

review. The first appellant states he was eventually granted a right of appeal and following a successful appeal, he was granted leave to remain in April 2012. He claims that at the time that he submitted his tax return for 2010/11, he was under immense stress. His future in the United Kingdom was uncertain, and his financial situation was in ruins because of the legal costs associated with challenging the respondent's unlawful decisions. He states that he will always regret his decision to complete the 2010/11 tax return himself, thinking it would be easy to do. He could not afford an accountant and his brother could not help. He states he had no knowledge or understanding of how the tax system works, and that led to errors.

16. In so far as the tax return for the period 2013/14 is concerned, the appellant claims that he was again, heavily distracted when the return was filed. The return was due in January 2015. His daughter was born prematurely, on 13<sup>th</sup> January 2015, and because of the pregnancy with complications, he was terrified both for his daughter and wife. His daughter spent the first 56 days of her life in a neonatal unit. When he filed his tax return from the hospital, he did so with his heart and mind in that hospital. The appellant claims he assumed the figures submitted in the return. The appellant explains that he later transitioned over to working solely on a PAYE basis, and he claims that if he had intended to defraud HMRC at any stage, it surely would have made more sense for him to continue to focus on his self-employed income, where he would have control over the declarations made to HMRC.
17. The appellant claims that he then made contact with Mr Asraf Sumra, a bookkeeper, who had been recommended by a friend. He claims that he was advised by Mr Sumra that he should make an amendment to his returns, but Mr Sumra wasted a lot of time without anything being done. The appellant assumes he was too busy. He claims that he ended up taking the documents back from Mr Sumra, and in November 2015, he appointed Majestic Accountants to amend the tax returns. The appellant

exhibits to his witness statements the 'screenshots' of conversations he claims to have had with Mr Sumra, that were not previously before Judge Woolley and which he claims, address the points raised by Judge Woolley that the appellant only amended the figures after he became aware of the Secretary of State's concerns in February 2016, when his application was refused. The appellant claims the screenshots provided, show that he had been in contact with Mr Sumra, but that he did not make any progress. He claims he had no idea at the time that the respondent would be looking into the declarations he had made to HMRC.

18. The first appellant addresses the decision of Judge Woolley in paragraphs [15] to [20] of his statement. In the remainder of his statement the appellant maintains that the refusal of leave to remain would be disproportionate and contrary to the best interests of his children. He confirms that neither of his daughters have visited Pakistan. He confirms his eldest daughter has required continued support and investigations into her health are ongoing. The first appellant confirms he has now been in the UK since December 2005, and he emphasises that he has become accustomed to life here. He claims that comparatively, the family has very little to return to, if they are forced back to Pakistan. He claims his "relations with his family are not great and the ties that he had with them, have diminished".
19. In cross-examination on 21<sup>st</sup> September 2021, the first appellant was referred to the screenshots of his exchange with Mr Sumra and was asked what prompted him to contact Mr Sumra. The appellant said that he contacted Mr Sumra to amend his tax returns when he realised the returns were not filed correctly. When pressed, he said that after his wife moved to the UK, he found some tax documents in a cupboard, amongst his educational certificates, and information about his qualifications when he was moving house. He had found some invoices and tax documents like the letter he had received from HMRC. He claimed he had found the documents in 2014 but contacted Mr Sumra in 2015. He said that the

delay between 2014 and 2015 was because he was busy moving house and after his wife had come to the UK, she had been unwell following a miscarriage in Pakistan previously. The first appellant accepted that Mr Sumra is not an accountant, but a bookkeeper. He had not used his services previously. He accepted he had used Accountants when he had previously made his applications to the respondent. When asked why he had not gone to an Accountant to deal with his tax affairs, the first appellant claimed that he had tried to contact the Accountant that he had used previously, but he was not available. He claimed Mr Sumra is a professional bookkeeper and has contact with a lot of Accountants. He believed Mr Sumra would be in a position to put him in touch with a Chartered Accountant. When asked why he had persisted with Mr Sumra, the first appellant claimed that he had provided Mr Sumra with the relevant documents and access to his on-line registration, and he wanted Mr Sumra to find an Accountant for him. He had been assured by Mr Sumra that he would try and find an Accountant for him. When referred to the screenshots, the appellant confirmed that although the screenshots that are at C62 to C81 of the appellants' bundle show communication between 5<sup>th</sup> May and 14<sup>th</sup> November, they do not disclose the year in which those communications took place. Mr McVeety put it to the first appellant that the screenshots refer to the calculations for the year 2010/2011, but there is no reference to the calculation for the year 2013/14. The first appellant said there was still time to file the 2013/14 return because the deadline was 31<sup>st</sup> January 2015. When it was put to the first appellant that his case is that the screenshots relate to a conversation he had with Mr Sumra between May and November 2015, and therefore after the deadline for filing the 2013/14 return, the appellant claimed that at the time, he thought he had filed the 2013/14 return correctly, and so did not ask Mr Sumra about that return. The first appellant accepted that he was contacted by HMRC in April 2014 regarding PAYE relating to his employment with Pizza Hut in 2011. He was asked whether, having received that letter, he was alarmed to see that he had been required to pay £802 against earnings of £4013, but had

only paid a very small amount arising from substantially greater earnings arising from his self-employment during that period. The first appellant claimed that he was going through a difficult time. In April 2014 his wife had joined him in the UK, having suffered a miscarriage in Pakistan at the beginning of 2014. He maintained that when he initially filed his returns for the period 2010/11 he was struggling financially and mentally because he had been unlawfully detained, and his right to work had been taken from him. He confirmed that he had been able to deal with the claim for judicial review and an appeal at the time, because he was represented by Solicitors and a Barrister. He did not however use an Accountant to deal with his tax affairs because his state of mind was not good, and he could not afford the cost. The first appellant accepted that there is a considerable difference in the amount of earnings declared to the respondent in support of his applications in 2011 and 2013, and the earnings figures declared to HMRC during the relevant periods. He maintained that the reasons he has given for the discrepancies are genuine and true.

20. For clarification, I asked the appellant that in respect of his earnings of circa £40,000 in the year 2010/11, he must have had a rough idea of what he might be required to pay HMRC, so that he could budget for his tax liability. In reply, he said that he thought he would amend the tax return later on, because he was not earning at the time, and his savings were being used up. He confirmed that he thought at the time, that he would amend the tax return later on. I asked the appellant whether he knew that the tax liability had therefore not been correctly stated. He said that he was not sure, but he thought he would amend the tax return later on, and so he contacted Mr Sumra when he found some documents when he was moving home. I asked him why he had left it until 2015. He said he had lost the documents and found the documents in 2014. There was no re-examination by Mr Gajjar.

21. At the hearing before me on 15<sup>th</sup> October 2021, the first appellant confirmed that the tax calculations that are at pages C7 to C10 of the appellants' bundle are the calculations based on the income figures originally submitted to HMRC. The calculation at C7 confirms the first appellant's income from self employment was said to be £6,680 for the year ending 5<sup>th</sup> April 2011. The appellant said in his evidence that he could not recall precisely when the self assessment had been submitted to HMRC, but he submitted it on-line, and it was likely to have been on a date between 20<sup>th</sup> and 31<sup>st</sup> January 2012. The calculation at C9 confirms the first appellant's income from self employment was said to be £8,834.00 for the year ending 5<sup>th</sup> April 2013. The calculation at C10 confirms the first appellant's income from self employment was said to be £9,210 for the year ending 5<sup>th</sup> April 2014. The appellant could not recall precisely when that self assessment had been submitted to HMRC, but again said he submitted it on-line, and it was after the birth of his daughter in January 2015.
  
22. The first appellant was referred to the amended return for the period 2013/14 that is at page C39 of the bundle. In respect of his self employment, his turnover was said to be £50,793 (C39). His total expenses were said to be £7444 (C40) and his net profit for tax purposes was calculated to be £43,349 (C41) and (C42). The appellant confirmed the amended return was prepared and submitted by his Accountant. He accepted that the amended return states that the 'basis period' began on 6<sup>th</sup> April 2012 and ended 5<sup>th</sup> April 2014 but said that must be a clerical error on the part of the Accountant. As far as he is aware, the amendment was in respect of his income from self employment between 6<sup>th</sup> April 2013 and 5<sup>th</sup> April 2014. I referred the appellant to the accounts prepared by the Accountant which also state, at C22 and C24, the 'basis period' to be 6<sup>th</sup> April 2012 to 5<sup>th</sup> April 2014, and that the profit was £43,349. The appellant maintained this too appears to be erroneous, and that in the amended self assessment at C39, it is confirmed that that the accounts cover the period 6<sup>th</sup> April 2013 to 5<sup>th</sup> April 2014.

### The parties submissions

23. On behalf of the respondent, Mr McVeety submits there is plainly evidence of a discrepancy between the earnings declared by the first appellant to HMRC and to the respondent in support of previous applications made, that give rise to a suspicion of dishonesty. That calls for an explanation. Mr McVeety submits that here, the appellant has previously maintained that he did not know of the discrepancies until he found some documents in 2014, whereas before me, he accepts that he was aware when he submitted his return for the year ending 2010/11, that the income declared may be incorrect, and he intended to amend the tax return later. Mr McVeety submits the appellant waited a considerable period of time before submitting any amendments, despite having been contacted by HMRC in April 2014 regarding his PAYE earnings relation to his employment with Pizza Hut in 2010/11. Mr McVeety submits that whilst it might be understandable that the appellant may have overlooked some invoices resulting in some minor discrepancies, it is not credible that some mistake or carelessness was the cause of such significant differences in the declarations made, and the discrepancies cannot simply be explained by the first appellant's state of mind and the difficulties in his personal life at the relevant times. Mr McVeety submits the first appellant went to and was advised by solicitors to deal with legal matters relating to his immigration status, but that is in stark contrast to how he dealt with his tax affairs. The appellant had used an Accountant when he made his applications for leave to remain and the appellant offers no credible explanation as to why he would not use an Accountant when he dealt with his tax affairs despite the pressure he was under.
24. Mr McVeety submits the conversation the first appellant relies upon with Mr Sumra, is suspicious. The year in which that conversation took place, over a period of months, is not apparent from the screenshots relied upon. Mr Sumra did nothing for the appellant, and although the

appellant claims he relied upon Mr Sumra to find him a Chartered Accountant, he did not do so. There is, Mr McVeety submits, no reason why the first appellant should use a bookmaker to then be put in touch with an Accountant, when he previously contacted a suitable Accountant directly, and could have done so again. Mr McVeety submits that stepping back and looking at the evidence of the appellant, the explanations that he has provided for the discrepancies are simply not credible and should be rejected. He submits the evidence establishes the first appellant deliberately misrepresented his earnings for his own advantage.

25. Mr McVeety acknowledges the appellant now has two children, both of whom were born in the UK, and neither of whom have travelled to Pakistan. They are not however, 'qualifying children'. The family and private life established by the children revolves around their relationship with their parents. He submits there is no evidence that the family unit, and in particular, the children, could not integrate in Pakistan. The first appellant's younger brother and mother continue to occupy the family home in Pakistan, and the appellant would have their support, together with any support required from his brother in the UK, upon return to Pakistan. Mr McVeety submits the appellants are unable to satisfy the requirements set out in the immigration rules and there are no exceptional circumstances to justify a grant of leave to remain outside the immigration rules. He submits the decision to refuse leave to remain is not, in all the circumstances, disproportionate.
26. On behalf of the appellant, Mr Gajjar invites me to allow the appeal. He accepts the appellant has extended his evidence before me regarding the tax return for the period 2010/11. The first appellant candidly accepts that he was aware there may have been some issue regarding that return, but Mr Gajjar submits, that does not indicate dishonesty. Although he filed a return that he knew may not have been entirely correct, that is not to say that he was dishonest. It may have been



careless, but he did not act dishonestly. Mr Gajjar submits the appellant is not someone who intended to permanently deprive HMRC of the tax due, and his evidence is that he intended to correct the position when he had the funds to do so. He submits the first appellant's explanation meets the minimum level of plausibility required. His state of mind at the relevant time will have clouded his judgment. The reason for not going to an Accountant was, as he explains in his witness statement, a combination of the personal pressures he was under at the time, and the simple fact that he could not afford the use of an Accountant because of all the other pressures on his finances. The first appellant's evidence is that he intended to correct matters when things improved, and he had the funds. Mr Gajjar submits the first appellant was able to instruct lawyers to deal with his immigration status. His application for leave to remain in the UK was submitted in 2011 and pre-dates his detention. He was not under the same personal and financial difficulties at that time. His appeal post-dates the detention, and the appellant was under some stress. The respondent had set out her reasons for refusing the application in the reasons for refusal letter and the appellant could address those issues. Mr Gajjar acknowledges there is a gap in correcting matters with HMRC, and although the first appellant's explanation that he forgot is not impressive, it is not sufficient to show he was dishonest. Mr Gajjar acknowledges HMRC contacted the appellant in April 2014, but he submits, the first appellant was at that time, focusing upon the miscarriage earlier that year and his wife's arrival in the UK.

27. Mr Gajjar submits the respondent's criticisms of the evidence regarding the involvement of Mr Sumra is a red-herring. He had been recommended by a friend and the appellant approached him in 2015, but in the end, he did not use Mr Sumra's services. The appellant explains he ultimately instructed Majestic Accountants to correct matters. Mr Gajjar submits the first appellant has given a plausible explanation regarding the declared earnings in the 2013/14 return. The relevant return was filed with HMRC at about the time that his eldest daughter

was born prematurely and was being cared for in the neonatal unit. The first appellant filed the return whilst he was in hospital and it is entirely understandable that not having the documents to hand, and the stress that the first appellant was under, caused the first appellant to make a mistake. Mr Gajjar submits that the mistakes made by the first appellant are substantial mistakes, but his conduct was not dishonest. He invites me to find the first appellant had provided an explanation for the discrepancies that meets the minimum level of plausibility.

28. Mr Gajjar submits that in any event, refusal under paragraph 322(5) is discretionary. He submits the eldest child is now someone who has lived in the UK for almost seven years and given the evidence regarding her health and the struggles that have been faced by the family, this is an exceptional case where discretion should be exercised in the appellants' favour.

#### The overall framework

29. The appellants have appealed the respondent's decision to refuse their application for leave to remain, under s82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under s6 of the Human Rights Act 1998. The appellants must satisfy me on the balance of probabilities that Article 8 ECHR is engaged. If it is, the burden shifts to the respondent to establish that the decision is proportionate.
30. Although the appellants' ability to satisfy the immigration rules is not the question to be determined, it is capable of being a weighty factor when deciding whether the refusal is proportionate to the legitimate aim of enforcing immigration control. As set out by the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. Conversely, if the rules are not met, although not determinative, that is a factor which

strengthens the weight to be attached to the public interest in maintaining immigration control.

31. Paragraph 276B of the immigration rules set out the requirements to be met by an applicant for indefinite leave to remain on the grounds of long residence in the United Kingdom. Part 9 of the immigration rules as set out prior to amendments introduced on 1<sup>st</sup> December 2020 set out the relevant general grounds for refusal. Paragraph 322(5) is a discretionary ground of refusal which states that leave should normally be refused where there is “... *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...*”. There is nothing to be gained by reciting the rules in this decision.
32. Section 55 Borders, Citizenship and Immigration Act 2009 requires immigration functions to be discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. The leading authority on section 55 is ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are “a primary consideration”, which, she emphasised, was not the same as “the primary consideration”, still less “the paramount consideration”.
33. The burden of proof in respect of all matters save for the allegation of dishonesty, is upon the appellant and the standard of proof is the balance of probabilities. The burden shifts on the same standard to the respondent if the proportionality question is reached. In respect of an allegation that an appellant has been dishonest, the burden is on the respondent to satisfy me of that fact on the balance of probability but bearing in mind that a finding that a person has been deceitful and dishonest in relation to their tax affairs is a very serious finding, with serious consequences.

34. It is entirely impractical for me to refer in this decision to all the evidence that is before the Tribunal. For the avoidance of any doubt, in reaching my decision I have had regard to all of the evidence before me whether that evidence is expressly referred to or not, in this decision.
35. In reaching my decision I have considered whether the first appellant's account of events is internally consistent and consistent with any other relevant information. I have had regard to the ingredients of his account of events, and his story as a whole, by reference to the evidence available to the Tribunal. I have had the opportunity of hearing the first appellant and seeing his evidence tested in cross-examination. In considering his evidence, I have borne in mind the fact that events that occurred some time ago, can impact on an individual's ability to recall exact circumstances. I also recognise that there may be a tendency by a witness to embellish evidence because although the core of the claim may be true, he/she believes that by embellishing their evidence, the claim becomes stronger. I also remind myself that if a Court or Tribunal concludes that a witness has lied about one matter, it does not follow that he has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. I have also been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible.

### Findings and Conclusions

36. I am satisfied that the appellants have undoubtedly established a family and private life in the UK and that Article 8 is plainly engaged. I also find that the decision to refuse the appellants leave to remain has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this

appeal is whether the decision to refuse leave to remain is proportionate to the legitimate aim, which requires a fact sensitive assessment.

37. I begin by considering whether the first appellant meets the requirements of paragraph 276B of the immigration rules. Judge Woolley previously accepted that on the face of it, the first appellant has accrued 10 years continuous lawful leave. The issue before Judge Woolley was the respondent's reliance upon the discretionary ground for refusal set out in paragraph 322(5) of the immigration rules. As Mr Gajjar identified in his skeleton argument, the issue before me is whether the appellant has put forward sufficient evidence to undermine the findings previously made, and to depart from the determination of Judge Woolley.
38. In considering whether the appellant's application for leave to remain falls for refusal under the general grounds for refusal I am satisfied that the discrepancy between the earnings declared to HMRC for the relevant tax periods and to the respondent in support of the applications for leave to remain made in 2011 and 2013 justifiably give rise to a suspicion that they are as a result of dishonesty. As the background to the discrepancies in the two tax returns are different, I take each one in turn. Before I consider the explanations provided by the appellant, it is useful to set out the relevant background as it appears from the evidence before me.
39. On 21<sup>st</sup> March 2017, the first appellant applied for indefinite leave to remain under the long residence rules. That application was refused by the respondent on 6<sup>th</sup> February 2018. The appellant's appeal against that decision was dismissed for reasons set out in the decision of First-tier Tribunal Judge Woolley. I have already set out at some length the findings and conclusions of Judge Woolley.

The application made in March 2011 and the tax return for the period 2010/11

40. On 24<sup>th</sup> March 2011, the applicant applied for leave to remain as a Tier 1 Migrant. In support of that application he provided the respondent with unaudited financial statements for the period 1<sup>st</sup> June 2010 to 28<sup>th</sup> February 2011 that were prepared by Muzzam & Co (*pages [F.29] to [F.35]*). The profit and loss account disclosed that the appellant had made sales of £49,165 and following the deduction of expenditure, finance costs and depreciation, he made a net profit of £40,080 (*page [F.33]*). The application was refused by the respondent on 13<sup>th</sup> June 2011.
41. The evidence before me discloses the following:
- a. On 20<sup>th</sup> June 2011, the first appellant was arrested on suspicion of having secured leave to remain by deception and he was detained (*page [F.44]*). Removal directions were set on 21<sup>st</sup> June 2011 for the first appellant's removal to Pakistan on 25<sup>th</sup> June 2011 (*page [F.56]*). A claim for judicial review was issued, and on 24<sup>th</sup> June 2011 an order was made by Mr Justice Owen restraining the respondent from removing the first appellant from the jurisdiction until determination of his application for permission to apply for judicial review (*page [F.70]*). He also directed that the respondent release the first appellant from detention forthwith. The first appellant was released and granted temporary admission on, it appears, 25<sup>th</sup> June 2011 (*page [F.43]*).
  - b. The first appellant's appeal against the respondent's decision of 13<sup>th</sup> June 2011 was heard on 27<sup>th</sup> July 2011 and allowed by Immigration Judge Thorne for reasons set out in a decision promulgated on 29<sup>th</sup> July 2011 (*page [B.143]*). The allegation of deception relied upon by the respondent at that time is referred to in the decision of the First-tier Tribunal Judge. At paragraphs [7] and [8], the judge recorded that the respondent claimed the appellant had practised deception because he had falsely claimed that he had obtained an educational qualification from London

College of Professional Studies and that London College of Professional Studies had informed the respondent that that was not the case. Judge Thorne found that the respondent had provided absolutely no evidence of any deception, and the appellant had produced an email from the college indicating that he had been awarded the claimed qualification. The appeal was allowed, and the first appellant was granted leave to remain as a Tier 1 General Migrant until 15<sup>th</sup> November 2013.

- c. However, on 15<sup>th</sup> November 2011 the first appellant was served with a decision to curtail his leave to remain so that it expired with immediate effect, on 15<sup>th</sup> November 2011 (*page [B.140]*). This time the respondent alleged that the documents submitted by the applicant from London College of Professional Studies were false because the London College of Professional Studies had never offered a legitimate postgraduate qualification in information technology. The decision carried a right of appeal, and the first appellant's appeal was heard by First-tier Tribunal Judge Williams on 12<sup>th</sup> January 2012. The appeal was allowed for reasons set out a decision promulgated on 16<sup>th</sup> January 2012 (*page B.127*), not as the appellant claims in his witness statement, on 16<sup>th</sup> February 2012. The appellant therefore continued to enjoy leave to remain until 15<sup>th</sup> November 2013.
- d. In January 2012, the appellant filed his self assessment, on-line with HMRC for the year ending 5<sup>th</sup> April 2011. The HMRC tax calculation for the period 2010/11 shows that the first appellant declared a profit from self-employment of £6,680 (*page C.7*). The total income on which tax was due was £205, resulting in a tax liability of £41.00. With the addition of class four national insurance contributions, the appellant was required to pay £118.20.

42. The first appellant claims that when he submitted his tax return for the period 2010/11, he was under immense stress. He claims that he had been detained by the respondent, his future in the UK was uncertain, and his financial situation was in ruins because of the legal costs associated with challenging the respondent's unlawful actions in 2011.
43. The first appellant explains in his witness statement that the tax return for the period 2010/11 was due to be filed between 6<sup>th</sup> April 2011 and 31<sup>st</sup> January 2012. He does not say in his witness statement when he submitted his return, but I accept his evidence that he completed the return himself. He claims that he could not afford to use the services of an accountant and had no knowledge of how the tax system works, and that led to errors.
44. The first appellant accepts that at the end of April 2014, the appellant received correspondence from HMRC (*page [C.11]*) regarding his self assessment tax return for the year ending 5 April 2011. He was informed that his income from paid employment with 'Pizza Hut' in the sum of £4,013 had not previously been put down on his tax return, and as a result, additional tax of £802.60 is due. An assessment was raised (*page [C.16]*) and the tax calculation for that year was amended (*page [C.18]*).
45. In cross-examination, the first appellant was asked whether, having received that letter, he was alarmed to see that he had been required to pay £802 against earnings of £4013, but had only paid a very small amount arising from substantially greater earnings arising from his self-employment during that period. The first appellant claimed that he was going through a difficult time. In April 2014 his wife had joined him in the UK, having suffered a miscarriage in Pakistan at the beginning of 2014.
46. After cross-examination and by way of clarification, I asked the appellant that in respect of the earnings of circa £40,000 in the year 2010/11 that he had relied upon when he made his application to the respondent in March 2011, he must have had a rough idea of what he might be required



to pay HMRC so that he could budget for his tax liability. In reply, he said that he thought he would amend the tax return later on, because he was not earning at the time and his savings were being used up. He confirmed that he thought at the time, that he would amend the tax return later on. I asked the appellant whether he knew that his income and tax liability had therefore not been correctly stated. He said that he was not sure, but he thought he would amend the tax return later on, and so he contacted Mr Sumra when he found some documents when he was moving home. I asked him why he had left it until 2015. He said he had lost the documents and found the documents in 2014.

47. At the hearing before me on 15<sup>th</sup> October 2021, the appellant said that he could not remember precisely when he submitted the tax return for the year ending 5<sup>th</sup> April 2011, but it was submitted on-line, and likely to have been on a date between 20<sup>th</sup> and 31<sup>st</sup> January 2012.
48. I find the first appellant is not being truthful in his evidence about the anomaly between the income from self-employment declared to the respondent in support of the Tier 1 application made on 24<sup>th</sup> March 2011, and the income declared to HMRC in the return for the year ending 5<sup>th</sup> April 2011. Having regard to the evidence before me that I have set out above, I am quite prepared to accept that the appellant is likely to have found the period between June 2011 and January 2012, a testing time. He was detained on 20<sup>th</sup> June 2011 and on 24<sup>th</sup> June 2011, an order was made by Mr Justice Owen restraining the respondent from removing the first appellant from the jurisdiction and directing that the respondent release the first appellant from detention forthwith. I can well understand that between June 2011 and the hearing of the appeal by First-tier Tribunal Judge Williams on 12<sup>th</sup> January 2012, the first appellant's is likely to have focused his efforts on challenging the respondent's decisions, but that is not to say that all his time was taken up dealing with those matters because, as he accepted in his evidence before me, he was assisted by solicitors and a Barrister. His appeal was

allowed for reasons set out a decision promulgated on 16<sup>th</sup> January 2012 (page [B.127]).

49. The profit from self employment of £6680, declared by the first appellant in his tax return for the year 2010/11 is a precise figure, but the appellant offers no credible explanation as to how he arrived at that figure. Even without instructing an accountant to deal with his self assessment, the first appellant must have been aware that on any view, his profit from self-employment could not be below the £40,080 that had been referred to in the unaudited financial statements for the period 1<sup>st</sup> June 2010 to 28<sup>th</sup> February 2011 that were prepared by Muzzam & Co. The appellant had relied upon the unaudited financial statements only a matter of months before, when he submitted his return for the 2010/11 period. The profit and loss account the appellant had relied upon and had access to, disclosed that the applicant had made sales of £49,165 and following the deduction of expenditure, finance costs and depreciation, he made a net profit of £40,080. Although I accept it is entirely plausible that the appellant faced some pressure between June 2011 and January 2012, even so, there is no reasonable explanation for his failure to accurately declare his income in his self assessment.
  
50. The appellant acknowledged before Judge Wooley that he had expected his annual earnings in 2011 to be circa £40,000. That is a figure that is broadly consistent with the net profit of £40,080 that is referred to in the profit and loss account that formed part of the unaudited financial statements for the period to 28<sup>th</sup> February 2011 prepared by Muzzam & Co Accountant, relied upon by the appellant in support of his application to the respondent. Judge Wooley recorded in paragraph [22] of his decision that the appellant had claimed that he “*had wrongfully brought forward expenses from 2012 to 2011 which reduced the amount earned.*”. Judge Woolley noted there was no documentary support for that claim, and that even if it had been brought forward, it amounted to only £6000 which goes nowhere near the figure quoted to the Home

Office. Despite the passage of time, the appellant has done nothing to engage with the observations made by Judge Woolley. In fact, the appellant did not proffer that as an explanation before me.

51. Notwithstanding the personal pressures the first appellant may have been under when he submitted his return for the 2010/11 period, there is in my judgement no credible explanation provided by the appellant as to why he would choose to declare a profit from self-employment of £6,680 when he submitted his return to HMRC, without having any regard to the profit and loss account prepared for him by accountants to support an application he had made to the respondent in March 2011.
52. In my judgement what is particularly telling is the first appellant's evidence that he was struggling financially because of the legal costs he had incurred, and his candid claim at the end of his evidence before me, that he thought he would amend the tax return later on, because he was not earning at the time, and his savings were being used up. The first appellant had an incentive to either inflate his income for the purposes of his application for leave to remain, and/or to under declare his income to reduce his tax liability given his own evidence regarding the precarious nature of his finances at the relevant time. I do not accept there was a genuine mistake or oversight by the first appellant. Even on his own account, he did not take any steps to even begin to deal with any under-declaration of his income until 2015.
53. The first appellant acknowledges that he received correspondence from HMRC in April 2014 regarding tax on his PAYE earnings, and even then, knowing that he had made a substantial under-declaration regarding his self-employed earnings to HMRC, he took no steps to remedy the situation in 2014 when he was plainly aware that checks were being made by HMRC regarding his tax return for the year ending April 2011. If as the appellant claims, there had been a genuine error or oversight and he had always intended to amend his return later on, that would provide

him with the perfect opportunity. Even taking into account the arrival of the second appellant in the UK in May 2014, and the miscarriage that she had suffered earlier that year, the appellant failed to take any steps to correct the income declaration that he had made some time previously. He did not do so, and I find, he had no intention of doing so.

54. The discrepancy between the self-employed earnings declared to the respondent of £40,080 and the self-employed earnings declared to HMRC of £6,680 is in my judgment a substantial one. The difference in the self-employed net profit declared amounts to some £33,400. Despite his evidence that he intended to correct the position when he had the funds to do so, on his own account the first appellant took no steps to correct the declarations made to HMRC until 2015. On the first appellant's own account, that is over four years after he had first submitted his return to HMRC for the period 2010/2011.
55. Having considered all the evidence before me, I reject the submission made by Mr Gajjar that the first appellant was not being dishonest because he is not someone who intended to permanent deprive HMRC of the tax due. In my judgement, the first appellant's conduct was not simply careless, but he knowingly acted dishonestly. I find that he had manipulated his self-employed earnings either in his application for leave to remain as a Tier 1 migrant that was made to the respondent on 24<sup>th</sup> March 2011, by inflating his income, or by making a substantial under-declaration of his self-employed income to HMRC for the period 2010/11, to minimise his tax liability.

#### The return for the period 2013/14

56. On 8<sup>th</sup> November 2013, the appellant applied, in-time, for further leave to remain as a Tier 1 Migrant. In support of that application he provided the respondent with unaudited financial statements for the period 1<sup>st</sup> October 2012 to 30<sup>th</sup> September 2013 that were again prepared by Muzzam & Co (*pages [E.26] to [E.32]*). The profit and loss account disclosed that the

applicant had made sales of £46,064 and following the deduction of expenditure, finance costs and depreciation, he made a net profit of £42,398 (*page [E.30]*). The application was successful, and the appellant was granted further leave to remain until 8<sup>th</sup> April 2017.

57. I pause to note that in her decision of 2<sup>nd</sup> July 2019, the respondent states (*at page 4 of 13*):

*“... You submitted a further application as a Tier 1 (General) migrant dated 8 November 2013. In relation to this application you claimed that you had previous earnings of £39,798.00. You stated in your application that your income of £39,798.00 were earnings from self-employment between 1 October 2012 to 1 September 2013...”*

At the hearing before me on 15<sup>th</sup> October 2021 neither representative was able to explain the difference in the two figures relating to the appellant’s self-employed earnings (£42,398 and £37,798). Nothing turns upon that difference, but I note the unaudited financial statements prepared by Muzzam & Co (*pages [E.26] to [E.32]*) refer to the period 1<sup>st</sup> October 2012 to 30<sup>th</sup> September 2013, whereas the respondent focused upon earnings from self-employment between 1 October 2012 to 1 September 2013 (*my emphasis*).

58. In any event, having made his application for leave to remain, the appellant subsequently filed his self assessment for the year ending 5<sup>th</sup> April 2013, on-line with HMRC. The date upon which the return was filed is not apparent, but it would have been due by 31<sup>st</sup> January 2014. He disclosed profit from self employment of £8,834.00 and his tax calculation (*page [C.9]*) shows that that the income tax due was calculated to be £145.80. In January 2015, the appellant filed his self assessment, for the year ending 5<sup>th</sup> April 2014 with HMRC. He disclosed profit from self employment of £9210.00 and as his personal allowance exceeded the profit, there was no liability for tax. (*page [C.10]*).
59. The first appellant claims that when he submitted his tax return for the period year ending 5<sup>th</sup> April 2014, he was heavily distracted. The return

was due in January 2015, however, on 13<sup>th</sup> January 2015 the third appellant was born prematurely, at 27 weeks gestation. She spent the first 56 days of her life in a neonatal unit. The appellant explains that given what was going on at the time, he “assumed the figures submitted in the returns.”.

60. The period 1<sup>st</sup> October 2012 to 30<sup>th</sup> September 2013 straddles over two tax periods; year ending 5<sup>th</sup> April 2013 and year ending 5<sup>th</sup> April 2014. The combination of self-employed profits previously declared to HMRC during those two tax periods was £18,044, and the first appellant’s combined tax liability over those two periods, was £145.80.
61. As I noted in the directions issued by me on 30<sup>th</sup> September 2021 in advance of the further hearing before me on 15<sup>th</sup> October 2021, it appears from the amendment declared by the first appellant in respect of the tax year to 5<sup>th</sup> April 2014 that for the period 6<sup>th</sup> April 2012 to 5<sup>th</sup> April 2014, following adjustments, his income from self employment was calculated to be £43,349; [C.20] and [C.24].
62. At the hearing before me on 15<sup>th</sup> October 2021, the appellant confirmed that at pages [C.19] to [C.24] of the appellant’s bundle, he has provided the ‘Self Assessment Tax Return’ accounts that have been prepared by Majestic Accountants to support the amendments to the return. He said that the amended tax return for the period ending 5<sup>th</sup> April 2014 is the document that appears at pages [C.25] to [C.46] of the appellant’s bundle.
63. The appellant said the amended return was completed by his accountant. He confirmed that the business turnover declared in the amended return, (*page [C.39]*) was his turnover for the one tax year, 6<sup>th</sup> April 2013 to 5<sup>th</sup> April 2014. The total expenses of £7,444.00 (*page [C.40]*) and the net profit for tax purposes of £43,349 (*page [C.41]*), also cover the one tax year, 6<sup>th</sup> April 2013 to 5<sup>th</sup> April 2014. His attention was drawn to the ‘basis period’ referred to in the amended return (*page [C.42]*), which

states that the 'basis period began' on '06.04.12' and ended on '05.04.14'. The appellant said that that looks to him like a 'clerical mistake', and he maintained that the amended tax return was for the period ending 5<sup>th</sup> April 2014 only. He confirmed that there had been no amendment required to the tax return for the year ending 5<sup>th</sup> April 2013.

64. The first appellant's attention was drawn to the original tax calculation for the period ending 5<sup>th</sup> April 2013 which states the profit from self-employment to be £8,834. He was referred to the 'Sales invoices' that appear at pages [E.2] to [E.9], that formed part of the evidence relied upon in support of the application made on 8<sup>th</sup> November 2013 and fall within the tax year ending 5<sup>th</sup> April 2013. A simple calculation of those invoices covering the period 1<sup>st</sup> October 2012 to 31<sup>st</sup> March 2013 alone shows sales of £12,543.25. The appellant said that he had incurred some expenses that year but could not remember what the expenses were.
65. Although the evidence is not clear, for present purposes, I am prepared to take the appellant's evidence in this regard at its highest and accept that the amendment made related solely to his net profit for the year ending 4<sup>th</sup> April 2014.
66. However, again I find the first appellant is not being truthful regarding his evidence about the anomaly between the income from self-employment declared to the respondent in support of the Tier 1 application made on 8<sup>th</sup> November 2013, and the income declared to HMRC in the return for the year ending 5<sup>th</sup> April 2014. The profit from self employment for the year ending 5<sup>th</sup> April 2014 was originally declared by the first appellant to be £9,210.00. That again is quite a precise figure, and likely to have been arrived at upon a calculation, even if it was a rough and crude calculation as to the appellant's turnover and expenditure.
67. The appellant simply claims in his witness statement that he completed the tax return when his daughter was being treated in the neonatal unit and given what was going on at the time, he "assumed the figures

submitted in the returns.”. He offers no explanation at all of the figure that he adopted leading to the calculation of a net profit was £9,210, rather than some other figure, that bore at least some resemblance to his actual income and expenditure.

68. I accept the first appellant will have been under some considerable personal stress when he finally submitted his tax return for the period 2013/14 at the end of January 2015, but the fact that the appellant was required to file a self assessment return will not have come as any surprise to him. It is unlikely, as a self employed individual, that he would have given no thought whatsoever to his income during the period ending April 2014, and the potential tax liability that would attract. I do not accept there was a careless mistake made by the first appellant. Notwithstanding the strain the appellant is likely to have been under following the premature birth of his daughter, the appellant could not possibly have believed at the end of January 2015 that the tax calculation that his profits from self employment were £9,210 during the year ending 5<sup>th</sup> April 2014, and thus attracted no tax liability, was accurate. There is a stark contrast between a net profit of £9,210, as originally declared, and a net profit of £43,349, following amendment.
69. It must in my judgment have been immediately obvious to the appellant that a net profit of £9210 for the year 6<sup>th</sup> April 2013 to 5<sup>th</sup> April 2014 could not be correct. He will have known, or should have known, that he had declared a net profit for the previous year (6<sup>th</sup> April 2012 to 5<sup>th</sup> April 2013) of £8,834 in or about January 2014. He will obviously have been aware that in November 2013 he had obtained and relied upon unaudited financial statements prepared by Muzzam & Co that stated that he had sales of circa £46,000, expenses of circa £3000 and had achieved a net profit of £42,398 between October 2012 and September 2013. Simply adopting those unaudited financial statements as a starting point, and assuming that £8,834 of the net profit had been achieved before 5<sup>th</sup> April 2013 and thus already accounted for in the tax return for the year ending



5<sup>th</sup> April 2013, there must have been a net profit of at the very least £33,564 during the period 6<sup>th</sup> April 2013 to 5<sup>th</sup> April 2014 (*i.e* £42,398 minus £8,834).

70. I do not accept there was a genuine mistake or oversight by the first appellant. Even on his own account, he did not take any steps to even begin to deal with any under-declaration of his income until 2015. As with the return for the year ending 5<sup>th</sup> April 2011, having considered all the evidence before me, I reject the submission made by Mr Gajjar that the first appellant was not being dishonest because he is not someone who intended to permanent deprive HMRC of the tax due. I find the appellant again knowingly acted dishonestly. I find that he had manipulated his self-employed earnings either in his application for leave to remain as a Tier 1 migrant that was made to the respondent on 8<sup>th</sup> November 2013, by inflating his income, or by making a substantial under-declaration of his self-employed income to HMRC for the period ending 5<sup>th</sup> April 2014, to minimise his tax liability.
71. For the avoidance of doubt, I confirm that in reaching my findings, I have had regard to the evidence in the form of messages exchanged between the first appellant and Mr Sumra. The appellant claims the evidence he has now produced of communications with Mr Sumra, which were not before Judge Woolley previously, undermines the conclusion reached by Judge Woolley, at paragraph [22], that the first appellant only amended the figures when he became aware of the respondent's concerns in February 2016 when his application was refused. The first appellant claims the screenshots provided show that he had been in contact with Mr Sumra before that, and he ended up taking the documents back from him before instructing Majestic Accountants in November 2015, to amend his tax returns. On the evidence before me, I cannot establish the year in which the appellant contacted Mr Sumra, but on his own account, the first appellant waited until November 2015 to instruct Majestic Accountants to make the amendments. That is only a matter of weeks

before made his application for leave to remain in the UK in December 2015. In his unsigned and undated witness statement (A.17 to A.20) that was before Judge Woolley previously, and which the first appellant adopted before me, he states at paragraph [4]:

“On the 2<sup>nd</sup> December 2015, I applied for ILR via premium service; my application was refused to (*sic*) the mistake made on my tax returns. I had the right to appeal, however I had decided to make a fresh application, with a clear head to enable me to amend my tax returns. My tax returns have now been amended with the help of a professional and have been cleared with HMRC...”

72. The first appellant’s own evidence therefore appears to be that it was not until after the application that he made on 2<sup>nd</sup> December 2015 was refused that he took steps to amend his tax returns. The evidence of the first appellant regarding his communications with Mr Sumra is unsatisfactory. It is not clear when the communications relied upon took place, and it is strange that the first appellant would seek the assistance of a book-keeper who he did not know, to put him in touch with a Chartered Accountant. The first appellant had used Accountants previously and would, I find, have gone directly to Accountants if he was genuinely concerned about correcting declarations made to HMRC as soon as possible. Mr Gajjar submits the evidence before the Tribunal regarding the involvement of Mr Sumra is a red-herring because in the end, the first appellant did not rely upon the services of Mr Sumra. That characterisation of the evidence by Mr Gajjar is probably accurate, but it is a red herring introduced by the first appellant to expressly undermine the finding that was previously made by First-tier Tribunal Judge Woolley. I gain little assistance from the evidence because as the respondent submits, it is not possible to ascertain from the evidence before the Tribunal whether that exchange of messages occurred in 2014 or 2015.
73. Standing back, having found that the first appellant has been dishonest, it is necessary for me to consider whether or not the dishonesty means the first appellant’s presence in the UK is undesirable. Refusal under paragraph 322(5) of the immigration rules is not mandatory. The under-

declarations were substantial and occurred twice. Both times, they relate to earnings declarations the first appellant had made to the respondent in support of applications for leave to remain. If the first appellant did not in fact have the income claimed, he would not have secured the further leave to remain. Although I accept the appellant has taken steps to amend the tax returns and pay off the sums due to HMRC attributable to the under declarations in the relevant years, I find that the appellant has shown a disregard for the tax/immigration laws of the United Kingdom to such an extent that his presence in the UK is undesirable. I am in the circumstances quite satisfied that the appellant does not satisfy the requirements set out in paragraph 276B of the immigration rules for leave to remain on the basis of long residence.

74. Notwithstanding my finding that the appellant does not satisfy the provisions of paragraph 276B, I have considered whether the appellants are able to establish that the requirements for leave to remain on private life grounds set out in paragraph 276ADE of the immigration rules are met.
  
75. In his oral evidence before me, the first appellant confirmed that his mother and younger brother continue to live in Pakistan with his younger brother's family. He also has three sisters in Pakistan all of whom are married and live with their husbands. He confirmed that since his arrival in the UK in 2005, he has visited Pakistan on four occasions. He last visited about eight years ago and has not returned to Pakistan since his wife joined him in the UK. When asked how often he speaks to his family, he confirmed that, now that he is free, he speaks to them 'a lot', and that he had regular contact previously. He confirmed that his younger brother works in Pakistan as an IT Consultant. He confirmed that his daughter, the third appellant is asthmatic and requires an inhaler. She has also had her tonsils removed.

76. It is convenient to deal with the third appellant, who was born on 13<sup>th</sup> January 2015, and is now 7 years old, first. She is under the age of 18 years and has now lived continuously in the UK for at least seven years. paragraph 276ADE(1)(iv) requires me to consider whether it would be unreasonable to expect her to leave the UK. In considering whether or not it would be reasonable to expect the third appellant to leave the UK now that she has lived continuously in the UK for at least 7 years, I have borne in mind that the best interests of a child must be a primary consideration, although not the paramount consideration. I make it clear that in considering the position of the third appellant I have disregarded entirely, the conduct of the first appellant and proceed upon the basis that the third appellant cannot and must not be blamed for matters for which she is not responsible.
77. At paragraphs [21] to [26] of his witness statement dated 20<sup>th</sup> May 2019 the first appellant stated it would be very difficult for the family to start from scratch in Pakistan at his age. He states that his children will miss out on a great education and strong and bright future opportunities. He states his daughter will not have the level of education that she is accustomed to, and the healthcare system in Pakistan is not very good. He does not believe that his daughter's medical needs will be taken care of, as well as they are in the UK. He states his daughters were born in the UK and it would be extremely difficult for them to adapt to the culture and rules in Pakistan. In his witness statement dated 27<sup>th</sup> October 2019, the first appellant confirms again that neither of his children have visited Pakistan. He confirms the third appellant was born premature and following complications, spent the first 56 days of her life in a neonatal unit. He states that since birth, the third appellant has required continued support from medical services and investigations into her health are ongoing. I have been referred to the medical evidence that is set out in section G of the appellant's bundle. Although there is no comprehensive medical report before me, I accept the evidence of the first appellant regarding the premature birth of the third appellant and

the complications that followed. I accept that there has been some ongoing investigation into her health, particularly during the period between June and November 2019 regarding a wet persistent cough, sleep apnoea and decreased hearing. The third appellant underwent a hearing assessment in July 2019 (*page [G.21]*) and her hearing in both ears was within normal limits and the second appellant was assured that the third appellant has satisfactory hearing for her ongoing development. Although there is a paucity of medical evidence before me, for the purposes of this decision, I am prepared to accept the evidence of the first appellant that the third appellant is asthmatic and requires an inhaler and that she has also had her tonsils removed.

78. There is nothing in the evidence before me that even begins to suggest that any medical treatment that the third appellant requires, would not be available or accessible in Pakistan. All of the third appellant's needs are met by her parents. The first and second appellant's are the primary carers of the third appellant and will remain so, whether the family lives together in the UK or in Pakistan. I accept the third appellant will feel a sense of loss being separated from friends that she has made in the UK, and her extended family, but she lives with loving parents who will support her throughout. Furthermore, she will have the opportunity of being brought up in her country of nationality, and an opportunity to develop relationships with other significant people in her life, including her grandparents, and other uncles and aunts. There is no evidence before me of any unmet needs and in the end, I am not satisfied that the third appellant has established, on balance, that it would not be reasonable to expect her to leave the UK.
79. Insofar as the first and second appellants are concerned, I am not satisfied that the requirements of paragraph 276ADE(1)(vi) the immigration rules are met. They are both nationals of Pakistan and spent the formative years of their lives in Pakistan. In his witness statement dated 27<sup>th</sup> October 2019, the first appellant claims, at paragraph 21.5,

that the family have little to return to. He claims that relationships with his family are not great, and the ties that he had with them, have diminished. I do not accept that evidence, and find it is another example of the first appellant being untruthful. In his oral evidence before me he confirmed that since he has been unable to work, he speaks to his mother and younger brother 'a lot', and that he had regular contact with them previously. I have no reason to believe that the members of the appellants' family that remain in Pakistan would not provide support to the appellants. Similarly, the appellants have been supported by the first appellant's brother in the United Kingdom and there is no reason why he should not continue to support them, particularly in the short-term whilst they establish themselves again in Pakistan, upon return.

80. In order to establish that there would be very significant obstacles to the appellants' integration into Pakistan, the appellants have to establish something more than mere inconvenience or upheaval. In the end, the task of the Tribunal is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether it regards them as "very significant". Taking into account all the evidence before me, in my judgement, the appellants have failed to establish that they would now face very significant obstacles to their integration on return to Pakistan, despite the absence of the first and second appellants from Pakistan for a number of years. The first and second appellants will have no difficulty with communication in Pakistan in their mother tongue, and in the fulness of time, neither will their young daughters. They are at an age where they will find it easier to learn a new language. I am satisfied that the first and second appellants are 'enough of an insider' in terms of understanding how life in Pakistan is carried on, given the length of time they lived in Pakistan previously, and that they and their daughters will have the capacity to participate in life in Pakistan, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day

basis there, and to build up a variety of human relationships to give substance to their Article 8 rights.

81. In reaching my decision, I have also had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002. The maintenance of immigration control is in the public interest. I acknowledge that the first appellant and children can all speak English and that the appellants appear to be financially independent in the sense that they receive support from the first appellant's brother and his family, with whom they continue to live. Those however are neutral factors. I remind myself that s117B(5) of the 2002 Act provides that little weight should be given to a private life established by a person at a time when their immigration status is precarious. I acknowledge the appellants have been resident in the United Kingdom for several years and have had periods of leave to remain. It is now well established that a person who is not a British citizen and who is in the UK with anything other than indefinite leave, has a precarious immigration status. I have also had regard to s117B(6) of the 2002 Act which provides that in the case of a person who is not liable to deportation, the public interest does not require the person's removal where (a) the person has a genuine and subsisting parental relationship with a qualifying child, and (b) it would not be reasonable to expect the child to leave the United Kingdom. The third appellant is a qualifying child as defined in s117D(1) of the 2002 Act. She is under the age of 18 and has lived in the United Kingdom for a continuous period of seven years or more. For the reasons I have already set out in paragraphs [76] to [78] above, I find that it would not be unreasonable to expect the third appellant to leave the United Kingdom.
82. I have no doubt the appellants wish to continue to live together in the UK, but that does not equate to a right to do so. They are, however, I have no doubt, a close family unit. The appellants might well initially feel a sense of loss because they will be separated from the first appellant's

brother and his family, with whom they live, but the sense of loss caused by that separation is not to say that they cannot continue to receive the love, care and emotional support that they provide each other. The appellants will be able to continue contact, albeit remotely with those that they have forge relationships and friendships with in the UK, and the first and second appellants have demonstrated their resilience in the way that they have been able to support themselves since their arrival in the UK. They will undoubtedly support their children to adjust to life in Pakistan.

83. The appellants have family in Pakistan. The first appellant returned to Pakistan several times before he was joined in the United Kingdom by his wife. His evidence at the hearing before me was that he remains in close contact with his mother and brother. Having taken into account all relevant matters and having considered the Article 8 claim in the round, taking into account matters that weigh in favour of the appellants including the length of time they have been in the United Kingdom, their connections to the United Kingdom and the best interests of the third appellant in particular, in my final analysis, I find the appellants' protected rights, whether considered collectively or individually, are not in my judgement such as to outweigh the public interest in the their removal.
84. I find that the interference by the respondent with the Article 8 rights for the purposes of the maintenance of effective immigration controls is proportionate. I find that the respondent's decision to refuse leave to remain would not be disproportionate and that the respondent's decision is therefore lawful under s6 Human Rights Act 1998.
85. It follows that I dismiss the appeal.

## **Decision**



86. The appeal is dismissed.

Signed **V. Mandalia**

Date

3<sup>rd</sup> March 2022

**Upper Tribunal Judge Mandalia**