



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02913/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 17<sup>th</sup> January 2019

Decision & Reasons Promulgated  
On 6<sup>th</sup> February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAHRIAR MANNAM RONY  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr S Whitwell of the Specialist Appeals Team

For the Respondent: Mr M Biggs of Counsel instructed by Prime Law Solicitors

DECISION AND REASONS

**The Respondent**

1. The Respondent, Shahriar Mannan Rony (the Applicant) is a citizen of Bangladesh born on 7 March 1981. On 6 February 2007 he was given leave to enter as a student. His leave was extended in different capacities several times, eventually expiring on 24 June 2016. On the day before expiry he lodged an application for applied for indefinite leave to remain as a Tier 1 (General) migrant which application on 7

February he varied to an application for indefinite leave to remain on the basis of 10 years' continuous law for residence.

### **The SSHD's Original Decision**

2. On 8 January 2018 the Appellant (the SSHD) refused the application because the Appellant did not meet the relevant suitability requirements of paragraphs 276B and 322(5) of the Immigration because having regard to the public interest it was undesirable to grant him indefinite leave in the light of his conduct. At page 3 the reasons letter of 8 January 2018 identifies the relevant conduct.
3. The SSHD noted the Applicant's application of 3 June 2013 for further leave as a Tier 1 (General) migrant claimed previous earnings of £52,735. £30,435 was attributable to employment and £22,300 to self-employment for the period ending May 2013. The SSHD noted that the Applicant's tax return to HM Revenue & Customs for the year ending 5 April 2013 showed a total income from all sources of £38,904 and concluded the Applicant had either failed to declare his full earnings to HMRC or had falsely represented his earnings to UK Visas and Immigration.

### **Proceedings in the First-tier Tribunal**

5. By a decision promulgated on 7 November 2018 Judge of the First-tier Tribunal MR Oliver found the Applicant had given a clear explanation, identifying the SSHD's misunderstanding of his tax affairs. The relevant period for purposes of his 2013 tax return and for his June 2013 further leave application were not identical and two months of the Applicant's income declared to UKVI fell within a different tax year. He went on to allow the appeal.
6. On 6 December 2018 Judge of the First-tier Tribunal Povey granted the SSHD permission to appeal because it was arguable the Judge had not given adequate reasons for accepting the Applicant's explanation and dismissing the SSHD's objections.

### **Proceedings in the Upper Tribunal**

7. The Applicant attended the hearing but other than to confirm his current address took no active part.
8. Mr Whitwell confirmed the SSHD did not intend to pursue the second ground for appeal that the Judge made a material misdirection of law on a material matter but would proceed on the first ground that the Judge had failed to provide reasons or adequate reasons to support his findings.
9. The Applicant had disclosed in his June 2013 application for further leave earnings of £52,735 and in his 2013 tax return had declared only £38,905: a difference of almost £14,000. Further, in the year ending 5 April 2013 the Applicant had been earning approximately £1793 each month at Whitbread (Costa Coffee). In the month of May 2013 he had received from this same source £8656. It was accepted he had produced

evidence that tax on that month's earnings had been paid in the tax year 2013/2014. Paragraph 12 of the Judge's decision was inadequately reasoned and failed to address the issues raised on page 3 of the reasons for refusal letter. Mr Whitwell agreed that the SSHD's concern was mainly focused on the Applicant's May 2013 earnings of £8656 from Whitbread with which the Judge had not adequately dealt.

### **Submissions for the Applicant**

10. Mr Biggs explained there was no discrepancy in the figures which the Applicant had declared to HMRC and UKVI: the income was received at different times and in different tax years. The SSHD had not made any allegation that the Applicant had not earned £8656 working for Whitbread in May 2013. The Applicant had produced evidence of this and furthermore the earnings would have been reported by Whitbread to HMRC and Whitbread would have accounted to HMRC for the tax deducted under the PAYE scheme. The Applicant had also produced HMRC's form SA302 which confirmed the income for the tax year ending 5 April 2014 which will have included the May 2013 earnings of £8656 from Whitbread.
11. The income which the Applicant had disclosed in his June 2013 application to UKVI was consistent with HMRC records for the relevant years ending 5 April 2013 and 2014.
12. The Judge had adequately addressed these issues. At paragraph 8 of his decision he had explained that the income declared to HMRC and claimed to UKVI covered different periods and had accepted the explanation of this given in the Applicant's accountants' letter of 31 August 2018. He had summarised this at paragraph 12 of his decision. There was no actual discrepancy to be explained. The decision did not contain an error of law and should stand

### **Further Submissions for each party**

13. Mr. Whitwell raised the point that the SSHD's bundle had not been before the Judge at the hearing. Mr Biggs responded that the only relevant additional document was the statement from HMRC but this did not assist the SSHD because it merely confirmed the evidence, particularly that of the Applicant's accountants, which was contained in the Applicant's bundle. As he had already submitted, the evidence showed there was no discrepancy in the income figures declared to HMRC and claimed in the further leave application to UKVI. Mr Whitwell had no further submissions to make.

### **Consideration and Conclusion**

14. I understand the concern that the Applicant's earnings for May 2013 from Whitbread are almost 5 times the average monthly earnings from this source for the tax year ending 5 April 2013. I note that no explanation has been given how it was that the Applicant came to earn so much in May 2013. Despite the absence of an explanation, the Applicant has produced evidence to show both that the amount was earned and has been declared to HMRC. Payment of tax would have been made under the PAYE

scheme. The Applicant's accountants have explained why what appears to be an inconsistency is not, namely because the periods for which the Applicant had to account to HMRC and to UKVI were not synchronous.

15. The Judge dealt adequately with these issues, principally at paragraphs 8 and 12 of his decision. It is fair to say that an understanding of the difference between the period of account and the year in which a return of tax should be submitted would be of assistance in understanding the Judge's reasoning. He was entitled to assume that his decision would be read in the light of such an understanding. He was not obliged to detail HMRC's rules on these issues.
16. The Judge gave proper, adequate and sustainable reasons for his decision. He was not required to explain basic principles of revenue law. His decision contains no material error of law and shall stand.

### **SUMMARY OF DECISION**

**The decision of the First-tier Tribunal did not contain an error of law and shall stand. The consequence is that the appeal of the SSHD is dismissed and the Applicant's original appeal has been allowed.**

**No anonymity direction is made.**

Signed/Official Crest

Date 01. ii. 2019

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal