



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/04414/2018
HU/04637/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 12 February 2019

Decision & Reasons Promulgated
On 25 February 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

MUHAMMAD NAVEED (FIRST APPELLANT)
MUNEEBA NAVEED (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Salam, Salam & Co Solicitors Limited

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Muhammad Naveed, was born on 23 March 1981 and is a male citizen of Pakistan. By directions dated 4 December 2018, Upper Tribunal Judge Gleeson directed that the appeal HU/04414/2018 should be consolidated with HU/04637/2018, the appeal of Mr Naveed's wife, Muneeba. Mrs Naveed is the dependant of her husband and no separate submissions had been made in respect of Mrs Naveed. Although Mrs Naveed's hearing was due to take place in the First-tier

Tribunal in Bradford in December 2018, it appears that the hearing did not take place in the light of Judge Gleeson's directions. Judge Gleeson directed that "these appeals be linked and heard together and the second appellant's appeal be treated as dependant on the outcome of the appeal of the principal appellant (Mr Naveed)." Although I do not have confirmation that there was no hearing in Mrs Naveed's appeal in December 2018 at Bradford, I confirm that I am, following the direction of Judge Gleeson and with the consent of both parties, hereby determining the appeals of both Mrs and Mr Naveed.

2. I shall refer, therefore, to Mr Naveed as "the appellant". The appellant came to the United Kingdom as a student. Shortly before his last period of leave was due to expire in March 2016 he applied for indefinite leave to remain as a Tier 1 (General) Migrant. Before that application was considered and determined by the respondent, the appellant varied his application to make a SET(LR) application for indefinite leave on the grounds of ten years' continuous lawful residence (paragraph 276B of HC 395). That application was refused by the respondent in a decision dated 26 January 2018. The refusal was made under paragraph 322(5) of HC 395:

(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;

3. The refusal under paragraph 322(5) refers back to earlier applications which had been successful in 2011 and 2013. In those years, the appellant's applications relied on self-employed income of respectively £38,000 and £41,000. In the same periods, the appellant's declarations to HMRC had been £9,000 and £20,000. The discrepancies had come to light only in 2016 at the time of or shortly before the appellant made the application which is the subject of this appeal. The refusal of the appellant's application reads as follows:

"The delay of several years in correcting your declarations to HMRC shows that you had little intention of correcting the errors promptly and as such have little respect for the United Kingdom tax laws. The Secretary of State considers that it would be undesirable for you to remain in the United Kingdom based on the fact that you have been deceitful or dishonest in your dealings with HMRC and/or UK Visas and Immigration by failing to declare your claimed PAYE and self-employed earnings to HMRC at the time and/or by falsely representing your income to obtain leave to remain in the United Kingdom."

4. Judge Pickup, who dismissed the appellant's appeal in a decision promulgated on 31 August 2018 wrote at [7]: it follows

"In short, the case for the respondent set out in the refusal decision is that either the appellant was being dishonest to UKBI in significantly inflating his true income in 2011 and 2013 to ensure he qualified for the necessary points in the PBS requirements, or he was dishonest by failing to declare his true self-employed earnings to HMRC in 2011 and 2013. Either scenario reflects poorly on the appellant's character."

5. The grounds of appeal to the Upper Tribunal lack focus and are unnecessarily prolix. The grounds are helpfully summarised in the grant of permission by Judge Gibb:

“The grounds which were in time complain that the judge erred in: (i) refusing to allow unreported cases to be cited, not following the Practice Direction; (ii) not considering Home Office Policy Guidance on the application of paragraph 32(5) of HC 395 (as amended); (iii) incorrectly applying the burden of proof to the appellant; (iv) his approach to the evidence as to errors of the accountant and to the appellant’s oral evidence; (v) giving no weight to the fact the appellant voluntarily offered the amendments to HMRC; and (vi) treating the appellant’s presence in the UK as precarious when it had been leave and in a category leading to settlement.”

6. Mr Salam, who appeared for the appellant before both Tribunals, challenged Judge Pickup’s decision on the basis that the Tribunal had failed to give proper attention to unreported cases and, in particular, to the Home Office guidance published 11 January 2018 entitled general grounds for refusal Section 4 and 5 considering leave to remain.

7. Regarding the appellant’s reliance upon unreported cases, Judge Pickup deals with this issue at [11]. He refused the application to cite unreported authorities. He was not satisfied that the Tribunal would be materially assisted by the citation of the decisions as distinct from adoption in argument for the reasoning to be found in the decision. He correctly noted that they were not binding on the Tribunal. He observed:

“there was no particular or direct link between any of the circumstances of these cases to this appellant and no compelling reason why they should be cited. This does not prevent the appellant relying on the arguments therein and having read the decisions I confirmed to Mr Salam that I was fully acquainted with the submissions he wished to pursue on behalf of the appellant and I have addressed those matters below.”

8. I find no error in the judge’s approach. He has applied the relevant Practice Direction. He made no attempt to prevent Mr Salam relying on the arguments which had been used in the unreported cases and, as I told Mr Salam at the initial hearing, to suggest that Judge Pickup should have relied upon the outcome of those cases is inappropriate since the decisions were in no way binding upon him.

9. As regards the guidance, Mr Salam submitted that the appellant’s case did not involve criminality or threat to national security, war crimes or travel bans. Both parties agree that the appellant has not been the subject of a criminal prosecution. Mr Salam submitted that, had the judge followed the guidance, he would not have held that the appellant had acted improperly in relation to his accounts or tax affairs. I disagree. The guidance makes it clear that “the *main* types of cases you need to consider ... are those involving criminality ...”. [my emphasis]. The list is not exhaustive. As regards the absence of a prosecution, the next paragraph of the guidance makes it clear that, “the person does not need to have been convicted of a criminal offence for this provision to apply.”

10. Helpful guidance in a reported case of the Upper Tribunal is provided in *R (on the application of Khan) v Secretary of State for the Home Department (Dishonesty, tax return paragraph 322(5))* [2018] UKUT 00384 (IAC). The guidance provided in that case by Spencer J makes it clear that where there has been a “significant difference between the income claimed in a previous application for leave to remain and the income declared to HMRC the Secretary of State is entitled to draw an inference that the appellant has been deceitful or dishonest.” Neither party sought to suggest that the figures involved in the instant case were not “significant”. Headnote (iv) of the guidance provides as follows:

“(iv) For an Applicant simply to blame his or her accountant for an “error” in relation to the historical tax return will not be the end of the matter, given that the accountant will or should have asked the tax payer to confirm that the return was accurate and to have signed the tax return. Furthermore the Applicant will have known of his or her earnings and will have expected to pay tax thereon. If the Applicant does not take steps within a reasonable time to remedy the situation, the Secretary of State may be entitled to conclude that this failure justifies a conclusion that there has been deceit or dishonesty.”

11. Judge Pickup makes no reference to *Khan* because the decision was not reported until after the First-tier Tribunal determination. However, I find that Judge Pickup has, in essence, followed the guidance provided by the Upper Tribunal. Mr Salam submitted that the letter from the appellant’s accountants (page 77 of the appellant’s bundle) assumed responsibility for the errors which had occurred. The letter (from Sarmad & Co Chartered Certified Accountants) is dated 20 July 2018. The relevant part of it reads as follows:

“We further confirm that in reviewing [the appellant’s] tax returns for the period ending 5 April 2011 and 5 April 2013 [the appellant] has identified some statistical errors which were rectified and resubmitted to HMRC. We also confirm that HMRC has accepted the resubmission and he [the appellant] is regularly paying his tax by direct debit to HMRC.”

12. I disagree that this letter should be read as assuming responsibility for the errors. The judge’s analysis is at [25]:

“The evidence submitted by the appellant from his accountants does not suggest that there was any error on their part whatsoever and does not satisfactorily explain the matter ... what ‘those statistical’ errors are has never been adequately explained. This is not a case of clerical or accounting error by the accountants.”

13. The judge’s findings in respect of the letter were plainly open to him. Indeed, it would be difficult to impose a different interpretation upon the contents of the letter. Further, the appellant took several years to correct errors which should have been apparent to him given that these were his own tax returns. The facts in the appellant’s case as found by the judge fall squarely into the guidance provided by *Khan* at [iv]. The appellant did not take reasonable steps within a reasonable time to remedy the situation. The appellant agreed in evidence before Judge Pickup that

“The accountant will have asked him to check and agree the figures before completing the accounts and making the HMRC submissions of declared income. [The appellant] said he knew that it was his responsibility but claimed that he had ‘just overlooked and the accountant submitted the accounts to the Inland Revenue.”

Not surprisingly, the judge found that evidence to be “entirely unsatisfactory”. I find it was open to the judge to find that the appellant “must have known full well that the figures submitted in 2011 and 2013 were wildly inaccurate and a misrepresentation of his true income [30]”. The judge was satisfied that “[the appellant] was not merely careless or incautious about his accounts and I am satisfied his attempt to blame his accountants is unsupportable on the limited evidence provided.”

14. The appellant’s own evidence is not that the accountant made an error, but the appellant himself had “just overlooked” very substantial discrepancies in his tax returns. The completion of accurate tax returns was ultimately the responsibility of the appellant himself. On the basis of that evidence, I am also satisfied that Judge Pickup was entitled to conclude that the Secretary of State had proved that the appellant was not merely careless or cautious but had intended to be dishonest. In the absence of a criminal prosecution of the appellant is, for the reasons I have stated above, irrelevant. Judge Pickup was able to consider both the oral and the documentary evidence and to make comprehensive findings accordingly. The apportionment of weight to various items of evidence was a matter for the judge. He was entitled to take account of the poor quality of the appellant’s evidence and, in concluding that the appellant had been dishonest, he was entitled to find that the appellant’s entire case had been a fabrication.
15. As I have noted above, the grounds are not written in a helpful way. Those which deal with the unreported cases, the apportionment of weight to various items of evidence and the ability of the judge, on that evidence, to find that the appellant had been dishonest I have dealt with above. Mr Salam did not refer in his oral submissions to [17-18] of the grounds of appeal which challenge the judge’s findings that the appellant and his wife had a “precarious” immigration status. Given that they did not have indefinite leave to remain, that is undoubtedly the case.
16. For the reasons I have given, the appeal should be dismissed.

Notice of Decision

17. These appeals are dismissed.
18. No anonymity direction is made.

Signed

Date 21 February 2019

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 21 February 2019

Upper Tribunal Judge Lane