



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/04768/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 8 January 2019**

**Decision and Reasons
promulgated
On 25 January 2019**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SRINIVAS KRISHNAMURTHY
[NO ANONYMITY ORDER]**

Respondent

Representation:

For the appellant: Mr Nigel Bramble, a Senior Home Office Presenting Officer
For the respondent: Mr Ellis Wilford, Counsel instructed by Advisa Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against his decision to refuse the claimant indefinite leave to remain under paragraph 276B of the Immigration Rules HC 395 (as amended) on the basis of 10 years' lawful residence in the United Kingdom.
2. The claimant is a citizen of Sri Lanka.

First-tier Tribunal decision

3. The First-tier Judge allowed the appeal because he found that the Secretary of State had failed to prove dishonesty by the applicant. The applicant's financial year and the HMRC tax year differed, and some figures had been provided net, while others were provided gross.
4. At [37], the First-tier Judge said this:

“37. I find as a fact that the [claimant] has not sought to deceive the [Secretary of State] or HMRC by either overstating his figures to the [Secretary of State] or under-declarations to HMRC on the basis of my analysis and findings set out above.

38. I now return to the burden of proof. In light of my findings above, the [Secretary of State] has failed to prove dishonesty. The assertions by the [Secretary of State] are simply not supported by the evidence produced to the [Secretary of State]. I find that there has been a misunderstanding of how accounting periods are different from those in relation to figures provided for visa applications. I also find that there is a misunderstanding of how gross profits can be reduced by losses and then accountants have then undertaken the tax computations which is where the figure provided by HMRC comes from.”

5. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

6. Permission to appeal was granted in the following rather odd format:

“2. The Judge found the [claimant] had not employed deception in his tax returns and so did not fall foul of the eligibility requirements. The Judge analysed the figures and found that the differences between the accounting years and those that applied to the [claimant]’s visa applications explained things.

3. The grounds argue [that] the Judge’s analysis was wrong as the figure provided to UKVI did not take account of deductible business expenses which placed the figures in breach of the Rules. *The Judge’s findings arguably require further consideration.*

4. *The grounds disclose no arguable error of law* and permission to appeal is granted.”

[Emphasis added]

7. The italicised passages are plainly inconsistent and it is unclear whether Judge Parkes intended to grant permission in this appeal.

Rule 24 Reply

8. The claimant’s Rule 24 response, received out of time on 10 December 2018, argued that the First-tier Judge was entitled to reach the conclusions

which he did, having heard from the claimant at the hearing and found him credible. The Home Office Presenting Officer had chosen not to cross-examine the claimant nor to dispute his factual account in their submissions. The claimant contended that the First-tier Tribunal decision should be upheld.

9. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

10. At the hearing today, Mr Bramble said that the Presenting Officer's record of proceedings indicated that the Secretary of State had accepted the claimant's evidence unchallenged, and further, that the First-tier Judge had given an indication that the appeal would be allowed. He made no further submissions.

11. I am satisfied that the decision of the First-tier Judge was open to him on that basis. I therefore dismissed the Secretary of State's appeal at the hearing and upheld the decision of the First-tier Tribunal.

DECISION

12. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Date: 11 January 2019

Signed **Judith AJC**

Gleeson

Upper

Tribunal Judge Gleeson