



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05778/2018

THE IMMIGRATION ACTS

Heard at Glasgow
on 14 March 2019

Decision & Reasons Promulgated
on 19 March 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SAAD MASOOD RISHI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Weir, of Burness Paull, Solicitors, Glasgow, instructed through Waterfords, Solicitors, Brentford

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by FtT Judge Farrelly, promulgated on 9 August 2018.
2. The grounds are set out in the application filed with the UT on 9 October 2018.
3. In a rule 24 response to the grant of permission, the respondent refers to *Khan* UKUT 00384, which was before the FtT as an unreported decision, and has since been reported.
4. The issue discussed in the FtT's decision at [16 - 19] is now settled along the lines of *Khan, Oji* [2018] CSOH 127 and *Dadzie and Parker-Wilson* [2018] CSOH 128. In short, deceit may justify a refusal in a case like this, but a genuine error cannot. That is the approach which the FtT applied.

5. As a preliminary, Ms Weir referred to the grounds at paragraph 11. References there to an interview and to an interview record are incorrect, and should be read as references to questions and answers on a questionnaire.
6. Ms Weir centred her arguments on the letter to the appellant from his previous accountants, dated 4 April 2013 (page 18 of his FtT bundle). This states that for the period 23 May 2012 to 2 April 2013 his net interim dividends of £36,752 would be “grossed up to £40,836 in your personal tax return”. She relied also upon the letter from accountants he later instructed (page 16), dated 23 July 2018, explaining how matters had been rectified with HMRC. The main points which I noted from her submissions, further to the grounds, were these:-
 - (i) The judge relied unduly on the Home Office report to the Select Committee, which was generic, rather than related to this case.
 - (ii) The judge paid inadequate attention to the documentary evidence before him of innocent error, which should have been found convincing.
 - (iii) A reasonable person would have taken it from the first accountant’s letter that a return was being made to HMRC accordingly. The judge failed to consider that issue.
 - (iv) If the appellant had been inflating his earnings to the respondent, there was no reason for the first letter to exist.
 - (v) There was evidence that the first accountants made errors in returns for the appellant which led to other assessments being extinguished, to no benefit to the appellant. That confirmed their capacity for error.
 - (vi) The judge had taken deceit by the appellant as the default position on a generalised approach.
 - (vii) The year at issue was the appellant’s first year of dividend income. That lack of experience made it more likely he would not realise from the low level of payment that anything had gone wrong.
 - (viii) While the standard of proof was the balance of probability, the seriousness of the allegation and of the consequences also had to be considered.
 - (ix) It was clear that to ascribe an error to accountants was not enough, but the evidence here went beyond passing the blame, and formed a coherent explanation.
 - (x) It was significant that HMRC had not seen fit to apply any penalties.
 - (xi) The decision should be set aside, and on proper scrutiny of the evidence, it should be reversed.
7. Having considered also the submissions for the respondent, I am not satisfied that the making of the FtT’s decision involved the making of any error on a point of law.

8. As Mr Matthews pointed out, the letter of 4 April 2013 was submitted by the appellant with his application to the respondent for leave. There was no other cause for it to be written. It was well within reason for the judge to treat it as part of an exercise of inflating his earnings at the time, rather than as showing him to be an innocent victim of someone else's error.
9. The tax unpaid, if the appellant was later telling the truth, was on £40,000, whereas he paid only £152 for that period (page G2, respondent's FtT bundle). Several reasons are to be found in the decision for not accepting this to be an accident:

At [12], the appellant's considerable level of financial sophistication.

At [13], an accusation against his previous accountants of negligence, but no complaint to their regulatory body; not credible the appellant would leave everything to his [previous] accountants; more credible [likely] he would had been called upon by them to approve accounts.

At [14], accountants would not have *carte blanche* to make the return; "simple mathematics undermines the claim of ignorance" - receipt of over £40,000, yet a modest tax bill; error, if such was the case, would have been apparent.

10. I am not persuaded that the judge took a generic approach, or took deceit to be the default assumption. Rather, he gave reasons which were specific to the case and firmly grounded in the evidence.
11. Ms Weir has focused all the best points for the appellant, but that is reassertion of his case, rather than identification of error in resolving it.
12. The decision of the First-tier Tribunal shall stand.
13. No anonymity direction has been requested or made.



14 March 2019
UT Judge Macleman