



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

Appeal Numbers: HU/06430/2018
HU/08954/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 March 2019**

**Decision & Reasons
Promulgated
On 5 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR MOHAMMED RIYAZ
MRS ANIQA RIYAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Sharma of Counsel

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

DECISION AND REASONS

1. Judge Trevaskis (the judge) allowed the appellants' appeals against the respondent's refusal dated 28 February 2018 refusing them indefinite leave to remain in the United Kingdom. The judge found the decisions by the respondent to refuse the applications under paragraphs 322(5) and 276B were not in accordance with the Rules. See [50] of the decision.

Further, that the refusal of indefinite leave to the appellants was a disproportionate interference with their private lives.

2. The grounds claim the judge's findings were unclear. From [45] of the decision the judge mixed his own findings with submissions made by the appellants' representative. It was unclear where the submissions ended and the findings started. For example, at [46] the judge noted the submission on the SSHD guidance. He then made findings based on whether or not the appellant was a criminal. That was not the SSHD guidance such that the judge's findings were misconceived.
3. The judge's findings at [47] sustained the error above. Furthermore, the judge had particular regard to the penalties imposed by HMRC which was irrelevant. The actions of HMRC are of no interest in immigration decisions because they are separate matters which should not be confused. As a result, the judge reached unsustainable conclusions on the decision under the Immigration Rules.
4. Further, the judge's findings on Article 8 at [61] were unsafe as they were based on the presumption the appeals should have been granted under the Rules. If the above grounds were correct with regard to paragraphs [45] - [47] the Article 8 findings were also in error.
5. Judge Keane granted permission on 8 February 2019. He said inter alia:

"It was submitted in the grounds that the judge did not adequately separate his enunciation of submissions made by the appellants' representative with his findings of fact. However, it was plain upon a careful reading of the judge's decision that he outlined his reasons at paragraph 44 of his decision and his conclusion to which those reasons pointed at paragraph 45. In the succeeding paragraphs of his decision he embarked upon an assessment as to whether discretion should be exercised. Nevertheless, a reading of the judge's decision revealed an obvious concern which amounted to an arguable error of law but for which the outcome of the appeal might have been different. Having outlined matters at paragraph 44 which individually and cumulatively struck against the first appellant's claim to have provided an innocent explanation, the judge went on to state at paragraph 45 of his decision,

'My conclusion is that I am not satisfied to the required standard that the male applicant has not practised deliberate dishonesty or deception on either HMRC or UKV1.'

Notwithstanding the use of the double negative it was reasonably to be inferred that the judge was finding that the respondent had established to the balance of probabilities that the first appellant's prima facie innocent explanation fell to be rejected. But that was so was also arguably supported by the judge remarking in the next sentence, 'the next question is whether that amounts to a reason which should justify refusal of

the application for indefinite leave.’ At paragraph 48 of his decision the judge considered whether the first appellant’s behaviour:

‘Calls into question his character and conduct and associations to the extent that it is undesirable to allow him to remain in the United Kingdom. That is a high threshold, and I do not find that his behaviour reached it. He has undoubtedly been careless and probably negligent, but he has not been criminal and he has taken the appropriate steps to rectify the discrepancy.’”

“2. The judge neglected to take into account his finding that the first appellant had practised deliberate dishonesty or deception and it was arguably irrational for the judge not to have done so. Had the judge done so he might arguably have arrived at a different decision whether the respondent correctly exercised the discretion with which he was endowed under paragraph 322(5) of HC 395 as amended. Such a finding might potentially materially have born on the outcome of the judge’s assessment of the proportionality of the decision under appeal and in time the Article 8 appeal. Although the grounds did not disclose an arguable error of law but for which the outcome of the appeal might have been different, a perusal of the judge’s decision revealed an obvious concern which arguably did so amount. The application for permission is granted.”

Submissions on Error of Law

6. The Rule 24 response and skeleton was handed up at the hearing. Mr Sharma submitted that the judge’s findings and decision did not disclose any material legal error. The decision was legally sound and sustainable although the judge clearly misdirected himself, in particular at [45].
7. Mr Tufan relied upon the grounds.

Conclusion on Error Law

8. The judge’s language is tortuous but it is clear at [45] that he finds the appellant had practised deliberate dishonesty or deception on either HMRC or UKVI. The judge’s reasoning at [47] – [49] was perverse given his previous findings.
9. The respondent was entitled to exercise his discretion under paragraph 322(5). The fact that the judge reached an unsustainable conclusion with regard to the Immigration Rules inevitably infected his Article 8 analysis.
10. The decision reveals a material error of law is set aside in its entirety and will be remade in the First-tier following a de novo hearing.

No anonymity direction is made.

Signed

Date 15 March 2019

Deputy Upper Tribunal Judge Peart