



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07705/2018
HU/08805/2018

THE IMMIGRATION ACTS

Heard at Field House
On 27th February 2019

Decision & Reasons Promulgated
On 12th March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MASOOD SADIQ (FIRST CLAIMANT)
SHAMA MASOOD (SECOND CLAIMANT)
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mrs L Kenny, Senior Home Office Presenting Officer

For the Respondents: Mr G Hodgetts of Counsel

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Owens (the judge) of the First-tier Tribunal (the FtT) promulgated on 29th November 2018.

2. The Respondents before the Upper Tribunal were the Appellants before the FtT and I will refer to them as the claimants. They are citizens of Bangladesh.
3. The first claimant was in the UK with leave to remain as a Tier 1 (General) Migrant with leave valid until 23rd May 2016. On 20th May 2016 he lodged an application for indefinite leave to remain as a Tier 1 (General) Migrant. On 17th July 2017 this application was varied to an application for indefinite leave to remain in the UK on the grounds of long residence, relying upon paragraph 276B of the Immigration Rules.
4. The second claimant is the first claimant's wife. She was in the UK with leave as the dependant of her husband. In May 2016 she applied for leave to remain as the dependant of her husband, and in July 2017 varied her application to an application for leave to remain in the UK as the spouse of her husband who was applying for indefinite leave to remain.
5. Following refusal of the applications the claimants appealed to the FtT and their appeals were heard together on 30th October 2018.
6. The judge noted that the Secretary of State had refused the first claimant's application with reference to paragraph 276B(ii) and (iii) and with the reference to paragraph 322(5) on the basis that it would be undesirable to permit the first claimant to remain in the UK in the light of his conduct, character or associations. The reason for refusal was that the Secretary of State believed that the first claimant had acted dishonestly because his claimed income when making his Tier 1 applications far exceeded the income that he declared when completing tax returns.
7. The judge found that the Secretary of State had failed to prove that the first claimant had acted dishonestly. It was not accepted that the Secretary of State had proved that the first claimant had inflated his income from self-employment for the purpose of submitting his Tier 1 applications, finding at paragraph 55 that the assertion by the Secretary of State was "simply not substantiated."
8. The judge found that the Secretary of State had failed to prove that the first claimant had acted dishonestly in failing to declare all of his income for income tax purposes. The judge concluded that the first claimant had not dishonestly submitted false tax returns but had acted carelessly in failing to check his tax returns.
9. The judge found that the second claimant could satisfy the requirements of Appendix FM, including the financial requirements and English language requirement.
10. The judge concluded that as the claimants could satisfy the requirements of the Immigration Rules in respect of private or family life, there would be no public interest in their removal from the UK and the appeals were allowed.

11. The Secretary of State applied for permission to appeal to the Upper Tribunal contending that the judge had made a material misdirection in law, and failed to provide adequate reasons for findings.
12. The Secretary of State relied upon the guidance in R (on the application of Khan) [2018] UKUT 00384 (IAC). Specific reference was made to paragraphs (iv) and (v) of the headnote to Khan.
13. It was submitted that the judge had failed to correctly consider the guidance in Khan as the judge had appeared to find the first claimant's explanation as to why his tax bill was so low to be implausible, but went on to find that this was in fact explained satisfactorily because it was the first tax return that the first claimant had submitted.
14. It was submitted that the judge had erred by accepting, without giving reasons, that the first claimant did not check or sign his tax returns. It was submitted that the judge had materially erred in considering whether the first claimant's actions were dishonest, especially given the large discrepancies in the declared income, and the fact that it went unnoticed for so long.
15. Permission to appeal was granted by Judge Mark Davies of the FtT, who after granting permission gave the following reasons for that decision;
 - "1. The Respondent seeks permission to appeal against the decision of the First-tier Tribunal Judge promulgated on 29th November 2018 who allowed the appellants' appeals against the decision to refuse them indefinite leave to remain.
 2. It is arguable that the judge failed to take into account all aspects of the guidance given by the Upper Tribunal in the case of Khan.
 3. The grounds are simply a disagreement with the findings made by the judge.
 4. The judge considered all the evidence and made findings on the evidence applying the correct burden and standard of proof.
 5. The grounds and the decision do not disclose an arguable error of law."
16. Following the grant of permission the claimants made an application to the FtT pursuant to rule 31 of the Tribunal Procedure Rules 2014 which relates to clerical mistakes and accidental slips or omissions, contending that Judge Davies had clearly meant to refuse permission to appeal but erred by granting permission.
17. An application was made to adjourn the hearing before the Upper Tribunal so that the FtT could consider the rule 31 application.
18. The application for an adjournment was refused by Upper Tribunal Judge Rintoul in the following terms;

"The application for an adjournment is refused. While the grant of permission is difficult to follow, rule 31 of the First-tier Tribunal (Procedure) Rules cannot be

used to reverse the effect of a decision – see Katsonga (slip rule; FtT’s general powers) [2016] UKUT 228 (IAC).

In the circumstances there is no prospect of the application made to the First-tier Tribunal succeeding, and I consider that it would be better if the appeal were to proceed on 27th February 2019.”

The Upper Tribunal Hearing

19. I heard oral submissions from both representatives. They are recorded in my Record of Proceedings and briefly summarised below.
20. On behalf of the Secretary of State Mrs Kenny relied upon the grounds upon which permission to appeal had been granted. It was submitted that the judge had not complied with the guidance given in Khan. It was contended that the judge had failed to provide adequate reasons for accepting the explanation given by the first claimant that he had not acted dishonestly.
21. Mr Hodgetts relied upon a response submitted pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In brief summary it was submitted that the grounds relied on by the Secretary of State amounted to a disagreement and did not disclose a material error of law.
22. It was submitted that the judge had made findings which were open to make on the evidence and given adequate and sustainable reasons for those findings. The judge had considered all the evidence and the decision did not disclose any irrationality or perversity.

My Conclusions and Reasons

23. I find it appropriate, as the Secretary of State’s challenge contends that the judge gave insufficient reasons for findings, to set out the guidance given in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC);

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”
24. In my view the judge followed the guidance in Khan, and that guidance is summarised at paragraphs 21–26. I do not find that the judge made a material misdirection of law, nor do I find that the judge provided inadequate reasons for findings made. I reach these conclusions for the following reasons.
25. The judge correctly set out the burden and standard of proof at paragraphs 19–20. At paragraph 21 the judge correctly recognised that each appeal will be fact sensitive.

26. At paragraph 45 the judge found there was a significant discrepancy when the first claimant's Tier 1 application and tax return for the tax year ending April 2011 were compared. There was undisclosed income of approximately £40,000.
27. At paragraph 49 the judge found that when a further Tier 1 application was compared with a tax return for the year ending April 2013, there was undeclared income of approximately £11,999.
28. It is apparent the judge was well aware of substantial discrepancies. The judge at paragraph 54 summarised the issue in the appeal, on the basis that findings needed to be made as to whether the first claimant, was deliberately dishonest or careless or negligent.
29. At paragraph 55 the judge dealt with the issue as to whether the first claimant had inflated his earnings for the purpose of making Tier 1 applications. The judge noted that when those applications were made, the Secretary of State accepted that the first claimant supplied "a full paper trail of his self-employed income." The first claimant adduced different evidence in respect to the various sources of income which included bank statements and invoices. The Secretary of State had not provided any evidence to show that the bank statements or other documents were fraudulent or manufactured, and the judge was entitled to find "that this assertion is simply not substantiated."
30. The judge, at paragraph 56, found that the real issue in the appeal related to whether the first claimant had deliberately underreported his self-employed income in order to dishonestly benefit by paying less tax.
31. The judge considered the first claimant's explanation and provided reasons for accepting that explanation at paragraphs 57-67 of the decision.
32. The judge found that the first claimant had not previously submitted a tax return in the UK until the return submitted in 2012. The first claimant had provided evidence from his accountants, that they were responsible for the error in the tax returns. The accountants had submitted a letter accepting responsibility.
33. Once aware of the discrepancy the first claimant rectified the mistake prior to submitting his application for indefinite leave to remain and entered into an arrangement to pay the outstanding tax.
34. The judge was entitled to find that the first claimant is not a tax expert and relied upon his accountant, who is a certified and chartered accountant. The judge was entitled to find that the first claimant had provided consistent evidence, and provided evidence from his accountant who took responsibility for the errors.
35. The judge at paragraph 61 took into account the significant discrepancy and that this was not picked up for several years. The judge considered whether it was plausible that the first claimant would not realise that the amount of tax he was paying on a substantial income was very low. The judge found that the first claimant had never

previously submitted a tax return in the UK. The judge noted at paragraph 62 that the accountant had in fact submitted three different versions of the same tax return on the same day which was 15th January 2014, which indicates that the accountant was fallible.

36. It is appropriate to note that the judge heard oral evidence from the first claimant, who was cross-examined and the judge found that the evidence given by the first claimant was not undermined in cross-examination.
37. In my view the judge was entitled to conclude that the Secretary of State had not proved that the first claimant dishonestly submitted false tax returns, and was entitled to conclude that the error was made by the accountant, which was accepted by the accountant, and the first claimant acted carelessly in failing to check his tax returns and to make sure he paid the correct tax.
38. I conclude that the judge considered all relevant evidence, made findings open to make on the evidence, and gave sustainable and adequate reasons for those findings. The duty to provide reasons as set out in Budhathoki, has been complied with.
39. I find the challenge by the Secretary of State amounts to a disagreement with findings made by the judge, but does not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal of the Secretary of State is dismissed.

There has been no request for anonymity and no anonymity direction is made.

Signed

Date 27th February 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

As the decision of the FtT stands, so does the decision not to make fee awards.

Signed

Date 27th February 2019

Deputy Upper Tribunal Judge M A Hall