



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01688/2019

**THE IMMIGRATION ACTS**

Heard at Birmingham Justice Centre  
On 7 October 2019

Decision & Reasons Promulgated  
On 21 January 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

K B  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Pipe, Counsel, instructed by TRP Solicitors.

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1 This is the appellant's appeal against the decision of Judge of the First tier Tribunal Fox dated 26 June 2019, in which the judge dismissed the appellant's human rights appeal. The appellant, a national of India, had made an application for indefinite leave to remain on the grounds of long residence. The appellant had originally arrived in the United Kingdom on 6 October 2007 with entry clearance as a student, valid until 31 January 2009. He had obtained further periods of leave to remain: as a student, until 8 August 2009; as a Tier 1 Post Study Migrant until 13 July 2011; and

then as a Tier 1 Migrant until 23 May 2013, and then 7 June 2016. On 6 June 2016 the appellant applied for indefinite leave to remain as a Tier 1 Migrant. On 31 October 2017 he varied that application to an application for indefinite leave to remain on the basis of 10 years residence. The appellant has been employed in the UK as a business analyst, on a self employed basis/as a director of his own company, and also as an employee of Barclays Bank.

2 As part of the process of considering the appellant's application for leave to remain, the respondent issued the appellant with a questionnaire regarding his employment during his residence in the United Kingdom, and asking, at question 14, if he had ever needed to correct or resubmit tax returns for the financial years for which he had gained leave to remain in the United Kingdom. The appellant completed and signed the questionnaire on 7 April 2017. He stated at question two that he had been self-employed during the year 2010/2011, and the director of a limited company during the years 2012/2013, and 2013/2014.

3 The appellant explained at question 14(a) that his previous accountant had made a mistake in the completion of his tax returns. He explained as follows:

"My previous accountant, Cahinia, stated they prepared self assessment to include for 12 month period (11/11/2010 - 30/10/2011) to submit in January 2013. Therefore, they did not include the self-employment figures in January 2012 tax return. However, the accounting firm confirms they inadvertently forgot to submit it in January 2013. I was not available due to my severe illness caused due to epilepsy seizures. I had multiple incidences of epileptic fits and was sentenced to A&E emergency department. This caused loss of consciousness and loss of memory to me. The medical condition affected my level of awareness and caused long-term depression to me. This made difficult for me to keep track of business and filing precisely." (*sic*)

4 In his decision of 10 January 2019, refusing leave to remain, and refusing the appellant's human rights claim, the respondent averred that the appellant had been dishonest in his tax affairs. The respondent noted that for the tax year 2010/11 information provided to HMRC showed that the appellant had an earned (PAYE) income of £14,420 gross, and for the same period, earned self employed income of minus £1470. The respondent asserted that these details had been filed with HMRC on 3 January 2012. However, the respondent noted that HMRC records for that tax year showed that an updated income of £32,606 was filed on 4 March 2016, not long before the application for ILR made on 6 June 2016. The respondent noted that the appellant had provided an explanation for the rectification of his tax return for 2010/2011, but asserted that the appellant had only sought to rectify his tax returns in 2016, in the knowledge that he would be called to account for his previous tax returns when applying for indefinite leave to remain. It was asserted that the appellant's explanation for why he provided an amended return had not been accepted. The respondent asserted that the appellant had either falsely declared his earnings to the UKVI in order to gain leave to remain and then filed tax returns to HMRC at a later date prior to making an application where previous earnings may be investigated, or, that he had in fact had legitimate earnings from self employment

which he had declared to UKVI but deliberately failed to declare them to HMRC and a later date remedied this to avoid being penalized.

- 5 The respondent averred that in either scenario the appellant's character and conduct was considered questionable and found that the appellant's character and conduct was such that it would be undesirable to allow the him to remain in the United Kingdom, and the respondent invoked the general grounds for refusal at paragraph 322(5) of the immigration rules.
- 6 The respondent also considered the requirements of paragraph 276B for indefinite leave to remain, and asserted by reference to paragraph 276B(ii)(c) that the appellant's personal history, including his character, conduct, associations and employment record were such that leave to remain ought not be granted. Further, as paragraph 322(5) of the rules had been invoked (general grounds for refusal), the requirement in paragraph 276B(iii) was not met.
- 7 The appellant appealed against the decision, his appeal coming before the judge at the Birmingham hearing centre on 11 June 2019.
- 8 The appellant relied upon a witness statement dated 5 June 2019 in which he provided as follows regarding his amended tax return for 2010/2011:

"10. You will note from the questionnaire that my previous accountants, Cahinia, advised me that rather than including earnings for a five month period [01.11.10- 30.03.11] in my self-assessment tax return I should include earnings for a twelve-month period (11.11.10 - 30.10.11).

11. Cahinia confirmed to me they would prepare and submit the relevant self-assessment tax return for me in January 2013 (*sic*). I followed their advice in good faith. I had no reason to doubt that they would act in accordance with my instructions.

12. However, when my current accountants, SAI Accountants Ltd, went through my earnings for the relevant five-year period in January 2011 it was discovered that my previous accountant had failed to act in accordance with my instructions. It is apparent that Cahinia entered the details for my earnings from self-employment incorrectly in the self-assessment tax return of January 2012.

...

14. Since submitting my appeal, the accountant to question (EN), of Cahinia Accountancy & Business Advisory Service has emailed me to confirm that a member of staff 'made an error' on the tax return for the year ending 31.03.11 and the I was 'not available to review' the self-assessment tax return 'before the return was filed due to ill ill health (*sic*)'. This email supports my version of events.

15. I asked him to explain exactly how the error occurred but he was not able to confirm this as the mistake had been made by a member of staff who had since left the firm. He speculated that it was data entry error. He was unwilling to go into any more detail than in his email of 29.05.19.

16. I have been asking (EN) for confirmation of the events in writing for months but he kept putting it off. He was clearly anxious to admit fault as it could open him up to a professional negligence claim. I asked him if he was willing to give evidence in person at my hearing that he declined. He even refused to put his explanation on the firm's letterhead paper."

9 Also relevant within the appellant's statement is his description of his health. He provides as follows:

"21. I have suffered from a number seizures which have led to me being hospitalised and on one occasion to have serious surgery on my arm. I am still taking regular medication and despite my health difficulties I have established a successful life for myself in the UK. I submitted my medical records under cover of my legal representatives' letter dated 07.04.17 to corroborate this."

10 In his decision, the judge directed himself at [7] that the burden of proof lay with the respondent as he was alleging dishonesty, and referred to the authorities of Khan, R (on the application of) v Secretary of State for the Home Department (Dishonesty, tax return, paragraph 322(5)) [2018] UKUT 384 (IAC) ('Khan'), and Balajigari v SSHD [2019] EWCA Civ 673 ('Balajigari').

11 The judge referred to the evidence before him from [25] onwards, and set out his findings from [43], stating:

"The respondent has satisfied the burden upon him. I apply Balajigari and Khan as part of my decision."

12 The judge held at [45], (and also at [72] and [86]) that the appellant had 'failed to provide an innocent explanation'; and at [50] that 'the respondent was entitled to arrive at his decision that the appellant had acted dishonestly in relation to the offending application when the available evidence is considered in the round.' The judge set out certain reasons for those findings at [51]-[69] before concluding at [70] that 'For all the reasons stated the respondent was entitled to apply Rule 322(5) of the Immigration Rules'. The judge referred at [73]-[74] to the consequences that were likely to flow for the appellant following the judge's findings but held at [76] that the appellant was excluded from relying on the Immigration Rules on the basis of Rule 322(5). Further, no significant obstacles existed in relation to his integration in India [77]. The judge considered at [87]-[93] whether the decision to refuse leave to remain would represent a disproportionate interference with the appellant's private life rights under Article 8 ECHR, and concluded that it did not. The appeal was dismissed.

13 The appellant sought permission to appeal against the decision in grounds of appeal dated 5 July 2019, arguing that the judge erred in law, in summary, as follows (and adopting the paragraph numbering in the appellant's grounds of appeal):

4(a) making a material misdirection in law by failing to consider that an *evidential* burden only fell upon the appellant, not a legal burden, such burden being to raise an innocent explanation for the discrepancy in his tax returns which satisfied the minimum level of plausibility (Muhandiramge (section S-LTR.1.7))

[2015] UKUT 675 (IAC) and Shen (paper appeals; proving dishonesty) [2014] UKUT 236 (IAC);

- 4(b) making an irrational finding/material mistake of fact, in purporting to find at [56] that the appellant had set up his business activity which conflicted directly with his employment, such finding having no evidential or rational foundation, and was a matter which was not put to the appellant and the judge proceeded unfairly by making such a finding;
  - 4(c) failing to consider properly the content of an email from Cahinia accountants in the appellant's bundle at page 464 explaining how the accounting error took place;
  - 4(d) failing to consider material matters/making an irrational finding - speculating at [62] that the appellant was alleging that his previous accountant had forged his signature or the HMRC accepted the tax return without a signed declaration; such hypotheses being irrational, as the appellant had instructed those accountants as authorized agent to handle his tax affairs and could submit a tax return on his behalf;
  - 4(e) proceeding under a material mistake of fact; appearing to believe that the appellant had ceased trading after the offending application had been submitted to HMRC, whereas that was not the case;
  - 4(f) misdirecting himself in law, as to the arguments advanced on behalf of the appellant, by suggesting at [67] that the appellant had not asserted that HMRC's decision not to penalise him was of any probative value in the appeal; that proposition was denied; the appellant had, through his Counsel, sought to rely upon the fact that HMRC had not penalised the appellant in 2016 following an amended tax return, as a relevant consideration as to whether dishonesty had been employed by the appellant in 2012 (indeed this is clear from the appellant's addendum skeleton argument, para 15);
  - 4(g) failing to consider material matters: at [65]-[66] the judge referred to the appellant's health but had failed properly to engage with evidence relating to the appellant's health when previously considering whether or not the appellant had been dishonest;
  - 4(h) misdirecting himself in law, when suggesting at [76] that the alleged deception in 2012 resulted in the appellant's last lawful leave expiring on 13 July 2011, as all further grants of leave followed on from that application.
- 14 Permission to appeal was granted by Judge of the First tier Tribunal Simpson on 5 August 2019.

### **Submissions**

- 15 I heard submissions from Mr. Pipe on behalf of the appellant, who expanded upon the grounds, and Ms Aboni, who defended the decision, arguing that the decision was open to the judge on the evidence before him and that the judge gave reasons for the decision which were adequate in law.

## Discussion

### Ground 4(a): burden of proof

- 16 In its judgment in Balajigari, the Court of Appeal agreed with the proposition that the application of paragraph 322(5) of the Immigration Rules involves a two stage analysis; the first being that it is ‘undesirable’ to grant leave to remain, in the light of specified matters, and a second stage, to decide, as a matter of discretion, whether leave to remain should be refused on the basis if it.
- 17 The first stage itself requires a three stage analysis. There must be (i) reliable evidence, of (ii) sufficiently reprehensible conduct, and (iii) an assessment taking proper account of all relevant circumstances known about the applicant at the date of decision, of whether his or her presence in the UK is undesirable (Balajigari, paras 33-34). The Court also agreed at [35], that in an earnings discrepancy case, sufficiently reprehensible conduct would only be established if the discrepancy was as a result of *dishonesty* on the part of the applicant.
- 18 It is also appropriate to set out paragraph 42 of the Court’s judgement:
- “Although Martin Spencer J clearly makes the point that the Secretary of State must carefully consider any case advanced that the discrepancy is the result of carelessness rather than dishonesty, there is in our view a danger that his "starting-point" mis-states the position. A discrepancy between the earnings declared to HMRC and to the Home Office may justifiably give rise to a suspicion that it is the result of dishonesty but it does not by itself justify a conclusion to that effect. What it does is to call for an explanation. If an explanation once sought is not forthcoming, or is unconvincing, it may at that point be legitimate for the Secretary of State to infer dishonesty; but even in that case the position is not that there is a legal burden on the applicant to disprove dishonesty. The Secretary of State must simply decide, considering the discrepancy in the light of the explanation (or lack of it), whether he is satisfied that the applicant has been dishonest.” (Emphasis added)
- 19 Although the authority of Muhandiramge does not appear to have been considered by the Court in its judgment, I am of the view that there is nothing in the Court’s judgment, in particular having regard to paragraph [42] of the judgment, set out above, which disturbs the guidance given in Muhandiramge at paragraph 10:
- “One of the more recent reported decisions belonging to this stable is that of Shen (Paper Appeals: Proving Dishonesty) [2014] UKUT 236 (IAC). This decision is illustrative of the moderately complex exercise required of tribunals from time to time. Here the Upper Tribunal held, in harmony with established principle, that in certain contexts the evidential pendulum swings three times and in three different directions:
- (a) First, where the Secretary of State alleges that an applicant has practised dishonesty or deception in an application for leave to remain, there is an evidential burden on the Secretary of State. This requires that sufficient evidence be adduced to raise an issue as to the existence or non-existence of a fact in issue: for example, by producing the completed application which is prima facie deceitful in some material fashion.

(b) The spotlight thereby switches to the applicant. If he discharges the burden - again, an evidential one - of **raising an innocent explanation, namely an account which satisfies the minimum level of plausibility, a further transfer of the burden of proof occurs.**

(c) Where (b) is satisfied, the burden rests on the Secretary of State to establish, on the balance of probabilities, that the Appellant's prima facie innocent explanation is to be rejected." (Emphasis added)

- 20 Mr Pipe's submission is that it was not evident from the judge's decision that he was considering whether the appellant's explanation as to the earnings discrepancy for the relevant year represented an account which satisfied 'the minimum level of plausibility' so as to transfer the burden to the respondent to establish to a balance of probabilities that the prima facie innocent explanation was to be rejected.
- 21 Although it is correct to note that the judge does not specifically direct himself in law as to the terms of Muhandiramge, and does not explicitly state that the burden on the appellant to provide an innocent explanation was an evidential one, not a legal one, I am of the view that it has not been established that the judge misdirected himself in law as to the shifting burdens of proof that may apply in a case such as the present. The judge referred to the most recent authorities relating to earnings discrepancy cases, and I cannot see that he has failed to apply them. It was clear from the judge's decision at [7], [49], [50], and [70] that he was aware that the legal burden to establish dishonesty lay on the respondent. No error of law arises.
- 22 Even if I am wrong about that, it is sufficiently clear, reading the judge's decision as a whole, that the judge was finding that the appellant's explanation did not meet the requirement to provide an innocent explanation which met even a *minimum level of plausibility*. Thus, any failure to make direct reference to Muhandiramge or as to whether the burden on the appellant was an evidential one, or a legal one, did not represent an error of law that was material to the outcome of the appeal.
- 23 I find no material error of law in relation to the appellant's first ground.

**Ground 4(b): irrational finding that appellant worked in conflict with his paid employment**

- 24 I agree with the appellant that there does not appear to be any proper evidential basis for finding that the appellant's self employment as a business analyst necessarily represented business activity which conflicted directly with the business activities of his employer. There was no evidence that the appellant was, for example, poaching clients from Barclays Bank. However, even if the judge thought that there was some conflict between the business activities of the appellant and his employer, I cannot see that such a finding was in fact relied upon by the judge in any material way in support the judge's overall finding that the appellant had been dishonest in his dealings with the respondent and/or the HMRC. It was not in dispute, for example, that the appellant had in fact been employed on both a self employed basis, and on an employed basis, at the relevant time. The judge's comment was in reality not relevant to the issues before him, but I cannot in any event see that the comment actually played any part in the judge's overall decision making.

**Ground 4(c): failing to consider properly the accountant’s explanation for the accounting error**

25 The judge referred to the evidence relating to the actions of the appellant, his accountant, and the accountant’s explanation at various points of the decision, in particular at [28], [32], [40], and [60]. It is unsustainable to assert that the judge did not take the explanation from Cahinia into account. Insofar as the appellant avers that the judge was incorrect in law to describe the evidence from Cahinia as a ‘bare admission of error’, I find no error of law in the judge describing Cahinia’s explanation in those terms: the email from Cahinia within the appellant’s bundle at [464], referred to by the judge at [60], provides that:

“This is to confirm that during the preparation of Self Assessment Tax Return for Kailash Bora for the year ended 31 March 2011 one of my staff at that time made an error on the Tax Return.

Mr Bora was not available to review the Self Assessment before the return was filed due to ill health.”

26 The email then points out that the appellant had informed them that the appellant had later had his tax return corrected by the appellant’s new accountants. The explanation quoted above could properly be described as a bare admission of error. There is no explanation of what the nature of the error was, what was done, what should have been done, what instructions had been provided by the appellant at the relevant time, or any kind of explanation as to how any error arose. There is no error in the judge’s assessment of the explanation provided by the appellant’s accountants. Insofar as Mr Pipe argues that the judge failed to have regard to evidence in an email from the appellant at [462] as to the difficulty that he had in obtaining a response from his former accountants, it is to be noted that the judge specifically recorded at [40] that the appellant relied on the email exchange between the appellant and Cahinia, at [462-464] of the appellant’s bundle.

27 The judge was not obliged to set out within his decision the content of every document taken into account by him. He clearly records that his attention was drawn to the appellant’s email at [462]. The appellant was there attempting to secure written confirmation from the accountant of the alleged content of a conversation between Cahinia and the appellant’s solicitor in which Cahinia is said to have accepted that the person completing the tax return in January 2012 had ‘lack of experience’. Even without referring directly to the appellant’s attempt to obtain a further explanation from Cahinia, there was nothing erroneous in law in the judge ultimately finding at [60] that “There is no reasonable explanation for this significant oversight of why Cahinia’s practices fell so short of an acceptable professional standard ...”

**Ground 4(d); speculating at [62] that Cahinia had forged the appellant’s signature/erring in finding ‘not credible’ that HMRC accepted the tax return without a signed declaration**

28 I agree that there was no evidential basis which supported any finding that Cahinia forged the appellant’s signature, and I cannot see any evidence to suggest that the



appellant accused them of that. Furthermore, insofar as the judge appears to find in the second sentence of [62] that it was 'not credible' that HMRC accepted a tax return without a signed declaration by the appellant, I take judicial notice of the fact that on-line tax returns do not require a physical signature; the submission of the form on line represents an assertion that the contents are true; and the appellant's accountants had been instructed to file a tax return. Thus, the judge appears to have erred in law, in making a finding which was not supported by evidence, and which, in relation to this issue, was at least potentially capable of affecting the judge's overall assessment of the appellant's credibility.

29 I return below to the question as to whether such error was actually material to the outcome of the appeal.

**Ground 4(e): proceeding under a material mistake of fact; appearing to believe that the appellant had ceased trading after the offending application had been submitted to HMRC**

30 The judge appeared to find at [55] that the appellant ceased trading at the time he submitted 'the offending application' and held at [64] that 'it is reasonable to conclude that the appellant has failed to provide reliable evidence of the reason he ceased trading once the offending application had been submitted and the reasons why he amended his tax records in the period immediately prior to his application for indefinite leave to remain'.

31 Mr Pipe argues that the judge proceeded under a mistake of fact. The appellant's grounds of appeal assert that the appellant was self employed as a sole trader for the year 2010-2011, and set up a limited company from which he earned dividends, for the tax years 2012-2014. Reference is made to paragraph [19] of the appellant's witness statement, in which it was said the appellant referred to tax calculation summaries for the years 2012-2016, showing that he consistently earned £35,000 for each year.

32 In fact, paragraph [19] of the appellant's witness statement refers to tax calculation summaries 'for the years ending 05.04.12, 05.04.13, 05.04.14, 05.04.15 and 05.04.16 [see pages 330-333 of my appeal bundle]'. However, the appellant's tax calculation summary for the year ending 05.04.12 does not appear in the page range [330]-[333] of the appellant's bundle, but rather, at page [329]. This shows that the appellant's declared income from all employments for the year 2011-12 was £19,739, with tax payable of £2,452. There is no reference in that document to income from dividends and his income was clearly less than £35,000 as apparently asserted by the appellant in his witness statement.

33 Further, the appellant accepts in his responses to the question 9(d)-(e) of the questionnaire dated 7 April 2017 that had traded for 23 months, from Nov 2010-March 2011, and from October 2012 - April 2014. There was clearly a break in his trading, and he ceased trading as a self employed sole trader in March 2011.

34 I find that it has not been established that the judge proceeded under any mistake of relevant fact when he held that '... it is reasonable to conclude that the appellant has

failed to provide reliable evidence of the reason he ceased trading once the offending application had been submitted ...'

**Ground 4(f): misdirection/failure to take into account a relevant factor; that HMRC had not penalized the appellant in 2016 following an amended tax return**

35 Having had regard to Counsel's addendum skeleton argument before the judge, it is apparent that the appellant did argue that the fact that HMRC did not impose any penalty against the appellant in relation to his amended tax return for 2010/2011, was a relevant consideration in the assessment of whether the appellant ahead acted dishonestly in relation to his tax affairs.

36 I accept that the judge therefore misrepresented the appellant's case as to relevant considerations he sought to rely upon, and I additionally find that the fact that HMRC did not impose any penalty was indeed capable of being a relevant consideration in the assessment of the appellant's honesty. Whilst at paragraph 66 of Balajigari the Court of Appeal appear to reject the proposition that the absence of a penalty imposed by HMRC is determinative that an error was innocent, the Court appears to proceed in the last 2 lines of [74] that such a consideration would remain relevant to the assessment of an applicant's explanation for an inaccurate tax return.

37 The judge thus errs in law and failed to take into account a material consideration.

38 I return below to the question of whether such error was material to the outcome of the appeal.

**Ground 4(g): failure to consider the appellant's health when considering whether or not the appellant had been dishonest**

39 This submission is not made out. The judge referred to the appellant's health, in particular the lack of any real evidence that the appellant suffered from any material ill health at the time that the tax return for 2010-11 was filed in January 2012, in his decision at [56], [57], [58], and [65]. There was nothing in any of the documents that Mr Pipe referred me to in submissions which demonstrated that the judge had left any relevant evidence regarding the appellant's health out of account.

**Ground 4(h): misdirecting himself in law, when at [76] the judge had suggested that the alleged deception in 2012 resulted in his last lawful leave expiring on 13 July 2011, as all further grants of leave followed from that application.**

40 I agree that the judge erred in law in appearing to find that, as a consequence of the judge's finding that the appellant had been dishonest in his application for leave to remain in March 2011, his lawful leave to remain should be considered to have expired on 13 July 2011 (leave granted to him on 13 July 2009).

41 This is an erroneous suggestion. The respondent has not sought to curtail any period of leave to remain, and the judge himself noted at the outset of the decision at [24] that the parties agreed that the outcome of the appeal depended on the judge's assessment of the applicability of para 322(5) of the Immigration Rules; it is impliedly accepted within that acknowledgment that the appellant otherwise satisfied the

requirements for indefinite leave to remain, including his possession of lawful leave to remain for the relevant period.

- 42 However, I find that the judge's comment at [76], that the apparent result of his decision that the appellant had been dishonest in his application for leave to remain in 2011, was that he had no further lawful leave thereafter, was not relevant to the finding that the appellant had employed dishonesty, which the judge had clearly already made, for the reasons previously set out in his decision before para [76]. The judge's erroneous comment was irrelevant to the issues in the appeal and had no effect upon the judge's decision regarding dishonesty.

### **Materiality**

- 43 I have found above that the judge erred in law in a number of respects. However, I have found that the only errors that had any arguable potential to be material to the outcome of the appeal were the following:

- (i) making a finding which was not supported by evidence (that Cahinia had potentially forged the appellant's signature, and/or that it was 'not credible' that HMRC accepted a tax return without a signed declaration by the appellant); and
- (ii) failing to take into account the material consideration that HMRC did not penalise the appellant in 2016 following his amended tax return.

- 44 I find that due to the preponderance of other reasons given by the judge for finding that the appellant had acted dishonestly in relation to his tax return of January 2012/his application for leave to remain in March 2011, that such errors were not material to the outcome of the appeal, and the judge would inevitably have dismissed the appeal, had he not erred as he did.

- 45 The judge relied upon the following factors in support of his finding that the appellant had acted dishonestly:

- (i) the judge did not accept that the appellant did not have sight of his tax return [51];
- (ii) in relation to his tax return for the year 2010/2011, and his application for leave to remain made on 31 March 2011, it was not credible that the appellant would be capable of making reliable representations to the respondent, but incapable of making reliable representations to HMRC, on the same material matters [52];
- (iii) having regard to the appellant's qualifications, and the nature of his work as a professional business analyst, and holding himself out as an expert for the purpose of business analysis consultancy services, it was reasonable to expect the appellant to notice Cahinia's error before 2016 [53]-[54];
- (iv) in relation to the alleged ill health which the appellant relied upon to excuse his overlooking a declared loss by Cahinia to the HMRC, there was no reliable evidence that his health problems affected his ability to continue in his main employment (with Barclays Bank); although there was evidence of absence for ill health from Barclays Bank in October 2014, there was no reliable evidence to

demonstrate that the appellant's alleged medical needs affected his employment and activities with Barclays in 2011 or 2012 as claimed [57]-[58];

- (v) family and friends, said to have assisted the appellant during his period of alleged incapacity, had not noticed Cahinia's error [59];
- (vi) Cahinia's explanation was a bare admission of error, with no reasonable explanation for the error [60];
- (vii) there was no evidence of any complaint made by the appellant to Cahinia's regulator, or any demand by the appellant that Cahinia pay for the audit that the appellant's later accountants carried out on the appellant's accounts [61];
- (viii) the appellant had failed to provide reliable evidence of the reason why he amended his tax return, immediately prior to his application for indefinite leave to remain [64], taking into account that the appellant had relied upon his historic ill health as the reason for his uncertainty that caused him to doubt that he had made accurate representations to the respondent; the appellant was therefore aware of the potential for misrepresentations to form part of his immigration history [65];
- (ix) the appellant was vague and evasive in his oral evidence [68];
- (x) the appellant was unable or unwilling to confirm whether he paid his tax contributions directly to HMRC [69].

46 I therefore find that any error of law on the part of the judge was not material to the outcome of the appeal.

### **Decision**

I find that the decision did not involve the making of any material error of law.

The appellant's appeal is dismissed.

Signed:

Date: 20.1.20



Deputy Upper Tribunal Judge O'Ryan