



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/02645/2019
& HU/03945/2019

THE IMMIGRATION ACTS

Heard at Field House
On 8 January 2020

Decision & Reasons Promulgated
On 29 January 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

Mr. AMARNATH PENDYALA
Mrs. VINUSHA RAVANAM
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr. J Gajjar, Counsel, instructed by Direct Access
For the Respondent: Mr. D. Clarke, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellants are nationals of India. They are a married couple, aged 38 and 32 respectively. They have a son who was born in this country and is presently aged 2.

2. The first appellant ('AP') appeals against a decision of the respondent dated 23 January 2019 refusing to grant him indefinite leave to remain in this country on long residence grounds. The respondent relies upon paragraph 322(5) of the Immigration Rules, observing that during the course of a previous application:

'... there would have been a clear benefit to yourself either by failing to declare your full earnings to HMRC with respect to reducing your tax liability or by falsely representing your earnings to UK Visas & Immigration to enable you to meet the points required to obtain leave to remain in the United Kingdom as a Tier 1 (General) Migrant.'

3. The second appellant ('VR') appeals against a decision to refuse her leave to remain on human rights (article 8) grounds, dated 20 February 2019.
4. Their appeals were initially considered by Judge of the First-tier Tribunal Hall, who allowed them by a decision sent to the parties on 24 July 2019. The respondent was granted permission to appeal and I set aside the decision of the First-tier Tribunal on 13 November 2019 having determined that the Judge of the First-tier Tribunal had materially erred in law. No findings of fact were preserved.
5. This matter was listed before me on 8 January 2020 for the resumed hearing.

Anonymity

6. No party to these proceedings sought an anonymity direction.

Background

7. AP arrived in the United Kingdom on 9 February 2008 and enjoyed leave to enter as a student until 31 August 2009. He secured a variation of student leave to remain until December 2009 and then enjoyed leave to remain as a Tier 1 (Post-Study Work) Migrant until December 2011. He subsequently secured leave to remain as a Tier 1 (General) Migrant until 18 March 2016.
8. AP married VR in India on 9 November 2013 and she secured entry clearance as her husband's dependant. She was granted leave in line with her husband until 18 March 2016.

9. In October 2010, AP started self-employment as an SAP Programmer, which involved him working on projects and providing on-line lessons.
10. AP applied for indefinite leave to remain ('ILR') as a Tier 1 (General) Migrant on 17 March 2016. The application was refused on the same day with the respondent relying upon paragraph 322(5) of the Rules and identifying the undesirability of permitting the appellant to remain in this country in light of previous conduct:

'You submitted an application on 18 March 2011 for leave to remain as a Tier 1 (General) Migrant. In this application, you claimed earnings of £35,897.75 for the period 01 March 2010 until 28 February 2011, which gave you 20 points under the earnings bracket. This earning was broken down by £17,101.80 from your employment with Boots the Chemist and £21,074.02 from your self-employment as Pendyala & Co.

You made a subsequent application on 18 March 2013 for further leave to remain as a Tier 1 (General) Migrant. In this application, you claimed earning of £37,438.85 for the period 01 March 2012 until 28 February 2013, which gave you 20 points under the earnings bracket. This earning was broken down by £19,963.85 from your employment with Bristol Laboratories and £14,475 from your self-employment as Pendyala & Co.

...

The Secretary of State has verified records provided by HM Revenue & Customs (HMRC) to establish what you declared to them in the years relevant to your previous Tier 1 (General) application.

HMRC check confirms:

Total Income all sources

2013/2014 - £21,009

2012/2013 - £32,719

2011/2012 - £21,486

2010/2011 - £19,880

2009/2010 - £7,977

Net profit from self-employment

2013/2014 - £2,247

2012/2013 - £15,810

2011/2012 - £2,728

2010/2011 - £2,778

No dividends

During your attendance today at the Premium Service Centre Croydon, you completed a short questionnaire regarding your self-employment earnings as part of your application. You stated in this questionnaire that amendments were made on one of the tax returns to HMRC and re-submitted a new assessment on 15 January 2016.

Given the discrepancies between your earnings claimed to the Home Office and those declared to HMRC, an officer representing the Secretary of State asked you further questions regarding your previous earnings.

You stated that you previously worked as a sole trader operating under the name of Pendyala & Co and you were registered as self-employed with HMRC for the financial year of 2010/2011.

You were asked about the discrepancy in your earnings claimed for your application to the Home Office submitted on 18 March 2011. To which you replied that in January 2016 your accountant noted this discrepancy in regards to earnings declared to HMRC and that you subsequently paid £750 to HMRC towards this and re-submitted an assessment.

You were asked to explain why the discrepancy occurred. You replied that the business was new and a cousin helped you with the HMRC claim.

The explanation provided by you regarding the discrepancies has been noted by the Secretary of State. The fact that you have retrospectively declared these claimed earnings to HMRC is not sufficient to satisfy the Secretary of State that you have not previously been completely honest in your dealing with HMRC and/or UK Visas & Immigration to benefit your either by failing to declare your full earnings to HMRC with respect to reducing your tax liability or by falsely representing your earnings to

meet the points required to obtain leave in the United Kingdom as a Tier 1 (General) Migrant.'

11. As AP continued to enjoy valid leave to remain at the date of decision, he did not enjoy a right of appeal to the First-tier Tribunal. He did not seek administrative review of this decision.
12. AP made an out-of-time application for ILR on 30 March 2016 and the respondent refused this application on 15 January 2018. The decision was confirmed by way of an administrative review decision dated 23 February 2018.
13. On 12 March 2018 AP applied for ILR on long residence grounds under paragraph 276B of the Rules. By way of a letter sent to the respondent on 18 October 2018 AP stated:

'In light of my current application and the internal review your department is carrying out, I would like to share the attached copy of [an] affidavit with you as provided by my cousin (Bhanu Prakash Koyyada), as he has taken sole responsibility in filing my tax returns for the year 2010–11 during his stay in United Kingdom.

As I mentioned earlier during my previous ILR (SET O) application at window and postal (during interview), that this was the only tax year (2010-11) I had took help from my cousin (due to lack of knowledge as it was first year of self-assessment) and ended up in error but all the other self-assessment years tax returns were filed by qualified accountant and none of them were reported calculation error.

I again admit tax error (year 2010-11) was identified by my accountant in January 2016 upon review requested by me and was immediately rectified. No government bodies, either UKVI or HMRC identified the error but I have taken initiative in correcting it (my accountant suggested tax correction as legitimate per HMRC Regulations) as a loyal resident of this country.

All the different amount of tax has been paid off to HMRC way back in 2016, as HMRC updated my tax calculation.

I am sending you copies of HMRC assessment after tax correction along with copy of SA02 and proofs of tax paid in the year 2016 for reconsideration.

I again want to make it clear that the error was unintentional, and I regret my mistake. I am still facing the punishment (31 months of stress and depression to me and family members) for it and hope you consider the attached documents before taking final decision in regards to my ILR application.'

14. The affidavit from Mr Koyyada is dated 15 October 2018 and details, *inter alia*:

'I would like to clarify that I have taken responsibility in filing the self-assessment tax returns of [AP] for the tax year 2010-11.

...

It was [AP's] first year of self-assessment and he wasn't aware of any accounting and taxing matters. My experience in running a business in India made him to approach me (during my stay in UK). Using my taxation knowledge, I have collected all relevant documents from him and finally submitted his tax returns in January 2012 by online tax return submission option on the HMRC website. Unfortunately, the error came to light in January 2016, when the accountant reviewed his tax return. After further digging into the error, I can conclude self-assessment calculations were done bearing in mind as limited company, where I included his house rent, phone and other bills and expenses within the self-employment expenses. Due to which his expenses rose to £17,314 leaving his net profit only £2,778. Thereby I would like to confirm, that [AP] is innocent and as a family member he trusted me but unfortunately things didn't go well.'

15. The application for ILR was refused by means of a decision dated 23 January 2019. The respondent did not accept that AP had accrued ten years' lawful residence. It was accepted that AP had enjoyed lawful leave from the date of his entry into this country on 9 February 2008 until the expiry of his Tier 1 (General) Migrant status on 18 March 2016. However, he overstayed from 19 March 2016 and remained in breach of the Immigration Rules from that date. The application was also refused with reference to paragraph 322(5) of the Rules. The decision details, *inter alia*:

'As part of your previous Tier 1 (General) Migrant application dated 18 March 2011 you claimed self-employed net profit earnings of £18,778.00 for the period 01 March 2010 to 28 February 2011. These self-employed earnings covered the tax year 2010/11.

In support of this application you provided bank statements and wage slips to demonstrate your earnings from self-employment. The documentation you submitted to UKVI showed that you demonstrated sufficient earnings to be awarded 20 points and thus you obtained leave as a Tier 1 (General) Migrant.

On 12 March 2018 you applied for indefinite leave to remain based on ten years' long residence.

On 26 November 2018 UKV&I sent you a questionnaire to complete relating to your previous Tier 1 (General) Migrant applications. You returned the questionnaire on 17 December 2018.

Checks with HMRC have shown that for the tax year 2010/11, you initially only declared self-employed earnings of £2,778.00. The above figures declared to HMRC on your original 2010/2011 tax returns as regards to your gross figures from self-employment of £7,230.00 is significantly lower than the £18,778.00 claimed on your Tier 1 (General) application of 18 March 2011.

It is considered that your initial declared income to HMRC would have acquainted to zero points in the previous earnings category rather than the 20 points that you have claimed.

It is noted that in the questionnaire you completed you were asked question 14: Have you ever needed to correct or submit your tax returns for the financial years stated in your answer to question 2? You answered Yes and stated that your tax was incorrect due to your lack of tax/accounting knowledge and due to you trusting your cousin who has taken responsibility for the unintentional calculation error.

However, it was your responsibility to ensure that your tax return was submitted on time with the correct information and by failing to do so it is considered that you have been deceitful or dishonest in your dealings with HMRC and/or UKV&I. It is therefore not a credible explanation that you would not have noticed the considerable discrepancy between the sums declared to HMRC and on your Tier 1 (General) applications and the tax implications this would have.

It is noted that you amended your tax returns for the tax year 2010/11 in January 2016 so that your self-employment income matched the figures you announced in your initial

Tier 1 (General) Migrant application. However, the fact that you have retrospectively declared these claimed earnings to HMRC over five years later does not satisfy the Secretary of State that you have not previously been deceitful or dishonest with HMRC and/or UK Visas & Immigration.'

16. The respondent decided that AP was unable to meet the requirements of Appendix FM. As for his private life rights consideration was given to AP's position under paragraph 276ADE(1)(vi) and the respondent determined:

'You are an Indian national and it is considered that you could return to live there again. You can speak the local language and, having spent the first approximately 25 years of your life in India it is considered that you will be familiar with the local customs, traditions and way of life. You have given no reasons as to why it would be impossible for you to reside in your country of origin again. You have not demonstrated that there are significant obstacles to your integration into India, the country to which you would have to go if required to leave the UK. Whilst returning to India may include some hardships, this does not give you any expectation of being permitted to settle here in the UK. We do not accept that you have resided here for so long that you would have completely lost all ties to India and that you would be unable to reside in that country again. To allow you to remain here now would be to allow you to circumvent the requirements of the Immigration Rules and would advantage you over others who have observed our Immigration Rules. Whilst you may prefer to reside in the UK, there are no compelling reasons to allow you to do so.'

17. The respondent further determined that no exceptional circumstances arose justifying a grant of leave to remain on Article 8 grounds outside the Immigration Rules.
18. In the meantime, VR applied for leave to remain on 12 March 2018. The respondent refused this application on 20 February 2019, detailing that she did not meet the eligibility relationship requirements for leave to remain on family life grounds under the Immigration Rules and no insurmountable obstacles existed in relation to paragraph EX.1 of the Rules.

Hearing

19. AP and VR attended the hearing before me. AP gave oral evidence and was subject to cross-examination. It was accepted by the parties that as VR was not married to AP at the date of the application for leave dated 18 March 2011, or the filing of the 2010/2011 tax return in January 2012, she was unable to throw any further light on the key issues in this matter. She formally relied upon her witness statement but was not cross-examined by Mr. Clarke.
20. The appellants made a 'rule 15(2) application' seeking permission to rely upon evidence that was not before the First-tier Tribunal, namely a letter from Mr. Vishnu Vardhan Venumuddala, dated 6 January 2020. It details:

'It is to confirm that [AP] was living with us (unofficially) in our house at [Hounslow] as a guest from April 2011 – October 2013, considering his personal circumstances and upon mutual understanding between us. He is my maternal relative and our families share great bond from back home to.

We didn't incur any rental burden on him although some miscellaneous expenses were being shared between us.

My family were happy during his stay with us and he was well behaved and a person with good character.

At the moment I'm away from United Kingdom for personal family reasons but can respond for any queries sent to my email ...'

21. Mr. Clarke did not oppose the admission of this document.
22. No documentary evidence as to Mr. Venumuddala's ownership of the property in Hounslow accompanies the application nor, in the alternative, are details provided as to whether or not it was a rented property. No evidence is provided as to the size of the property, including the number of rooms, nor as to how many 'family' members resided there at the relevant time. The reference to 'unofficially' is not explained. Mr. Venumuddala provides a different home address to that detailed as being where he lived with the appellant but presents no detail as to the date when he

moved property. He provides no evidence that he resides at the new address. I admitted the document but observed to Mr. Gajjar that he would have to address the notable failings in submissions when identifying the appropriate weight to be placed on this document.

Decision

23. The Court of Appeal in *Balajigari v. Secretary of State for the Home Department* [2019] EWCA Civ 673; [2019] 1 W.L.R. 4647 considered the application and substance of paragraph 322(5) of the Rules and held that the paragraph first involves deciding whether it is 'undesirable' to grant leave. If so, the second stage is to decide as a matter of discretion whether to refuse leave. 'Undesirability' requires reliable evidence of sufficiently reprehensible conduct, and an assessment, taking proper account of all relevant circumstances, of whether an applicant's presence is undesirable. An earnings discrepancy only constitutes sufficiently reprehensible conduct if it is a result of an applicant's dishonesty. Carelessness or ignorance or poor advice are not conduct making it undesirable for an applicant to remain here and genuine or innocent errors do not meet the necessary threshold. The Court approved the procedural guidance to the consideration of such matters by Martin Spencer J in *R (on the application of Khan) v. Secretary of State for the Home Department* [2018] UKUT 384 (IAC); [2019] Imm. A.R. 239.
24. On the facts of this matter, there is a substantial discrepancy between the income declared by AP on his tax return for 2010/2011 through self-employment (£2,778) and his self-employed net profit income declared to the respondent by his 2011 Tier 1 (General) Migrant application (£18,778).
25. I am mindful that whilst the burden falls upon the appellants to establish that a failure to grant leave to remain is a disproportionate interference in their protected family and private life rights, the burden to establish dishonesty falls upon the respondent. As observed by Martin Spencer J a finding that a person has been deceitful and dishonest in relation to his tax affairs – or in seeking leave to remain –

with the consequence that he is denied settlement in this country is a very serious finding with serious consequences.

26. As confirmed in Re H (Minors) (Child Sexual Abuse: Standard of Proof) [1996] AC 563 and Secretary of State for the Home Department v Rehman [2003] 1 AC 153, the balance of probability standard is a flexible standard and so when assessing this probability the Tribunal will assume that some things are inherently more likely than others. Though the civil standard of proof on the balance of probabilities is finite and unvarying, the more serious the allegation the less likely it is that the event occurred, and thus the stronger and more cogent should be the evidence before a court or Tribunal determines that on the balance of probabilities the event did occur: Re: D [2008] UKHL 33; 1 WLR 1499.
27. As to the relevant civil test for dishonesty, the Supreme Court held in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club) [2017] UKSC 67; [2018] AC 391 that the fact-finding Tribunal has first to ascertain the actual state of the individual's knowledge or belief as to the facts. The reasonableness of that belief is a matter of evidence going to whether they held the belief, but it is not an additional requirement that the belief had to be reasonable; the question is whether it was genuinely held. When the state of mind is established, the question whether the conduct was honest or dishonest is to be determined by applying the objective standards of ordinary decent people.
28. Returning to the judgment of Martin Spencer J in Khan it is not sufficient for an appellant, in this matter AP, simply to blame his accountant for an 'error' in relation to the historical tax return. The respondent is entitled to take into account that, even where an accountant has made an error, the accountant will or should have asked the tax payer to confirm that the return was accurate and to have signed the tax return, and furthermore the appellant will have known of his or her earnings and will have expected to pay tax thereon. If, realising this (or wilfully shutting his eyes to the situation), the appellant has not taken steps within a reasonable time to remedy the situation, the respondent may be entitled to conclude either that the error was not simply the fault of the accountant or, alternatively, an appellant's failure to remedy

the situation itself justifies a conclusion that he has been deceitful or dishonest and therefore he should be refused indefinite leave to remain within paragraph 322(5) of the Rules.

29. The facts arising in this matter require me to consider the truthfulness of AP's account. If I am satisfied that an error occurred, I am then to ask myself why AP did not realise that an error had been made because his liability to pay tax was less than he should have expected or, at the latest, should have been known to him at the time his next tax assessment was completed and items such as personal rent and telephone expenditure were not put through his accounts. I am required to consider the evidence in the round, and to be mindful that the burden rests upon the respondent to establish dishonesty.
30. The appellants did not seek to assert that there was no prima facie evidence available to the respondent upon which she could found an allegation of dishonesty. Such evidence is identifiable in the discrepancy between the earnings for self-employment provided in the 2011 application for further leave to remain and those subsequently provided to HMRC. The burden of proof therefore transfers to AP as to the establishment of an innocent error.
31. AP details as his innocent explanation that he relied upon the expertise of his cousin, Mr. Koyyada, to competently complete his tax return for the tax year 2010/2011. He was aware that whilst in India his cousin had completed a Fundamentals in Business Accounting course in 2009, securing a grade A. Further, he had work experience in the field of accountancy having worked for accountants in this country between 9 May 2011 and 18 November 2011. He explained to me that he asked his cousin to help him as he was trying to save money. Whilst accountants were asking for £700, Mr. Koyyada was willing to prepare AP's tax return for £300. AP further detailed that as he trusted his cousin, he did not oversee his work and did not cross-check the return with his actual income. In my decision dated 13 November 2019 I accepted that despite not possessing domestic accountancy qualifications, Mr Koyyada is permitted to be considered an 'accountant' for the purpose of the appellant's defence

to the error. This is because unlike the terms solicitor or financial independent adviser the term accountant is not protected.

32. AP's case as to innocent error rests largely upon his being able to rely upon Mr. Koyyada having sufficient experience of accountancy so that he could be reasonably trusted to competently undertake the required calculations and complete the tax return. However, it does require me to accept that Mr. Koyyada could have confused elements of accounting procedure relating to limited liability companies when considering AP's self-employed status.
33. Upon inspection the self-assessment tax return purportedly completed by Mr. Koyyada is to be found at [C8] - [C19]. At [C10] the box for self-employment is marked. The self-employment pages at [C18] - [C19] have been completed. AP's business is detailed to be a business consultancy at section 1 at [C18] and AP is identified at section 5 on the same page as having commenced trading on 1 September 2010. The turnover is identified at section 8 as being £20,092. Importantly, in the box entitled 'allowable business expenses', also on [C18], £16,208 is placed within section 10, which is entitled 'costs of goods bought for resale or goods used'. AP could offer no explanation at the hearing as to why Mr. Koyyada, who has accountancy experience, could reasonably believe that housing rent and telephone bills could be placed in a section solely concerned with 'goods bought for resale or goods used'. I observe that if an error were to be made, it would be significantly more likely that the erroneous entry would be placed at section 13 which is concerned with 'rent, rates, power and insurance costs' or at section 18, 'other allowable business expenses'. It is very difficult to understand as to how anyone with basic knowledge of accounts could make the error that arises in this matter, namely considering housing rent and telephone expenditure to be 'goods'.
34. I note that when completing the application for further leave to remain in March 2011, some 3 or so weeks before the end of the tax year, AP relied upon figures prepared by a firm of accountants. In evidence before me, he was vague as to who prepared the figures relied upon, detailing, *'I don't remember the person, their name.'*

They were a professional. They were in the Ilford area. I cannot remember the name of the firm. May have been called Bukhari Associates. I accept that over the passage of time, the name of the accountancy firm may have been forgotten, but AP accepts that the figures relied upon were calculated by a professional firm of accountants. I observe when considering the evidence in the round that having already paid a firm of accountants to prepare figures as to his earnings on all but the last three weeks of the relevant tax year, it is unclear as to what significant financial savings he would have made by requesting his cousin to consider his financial documents afresh and prepare his tax return.

35. AP's position is that he provided his cousin with all relevant documents and, as he trusted his cousin entirely, he accepted the completed assessment and tax return without checking them. Because he trusted his cousin he was not surprised or concerned that his tax liability on his self-employed earnings amounted to a small sum.
36. The following year, and for the years thereafter, AP's accounts were prepared by Faz Accountancy Services, who are based in Ilford. AP was explicit in his evidence that the erroneous nature of the 2010/2011 tax return was not picked up by the new firm of accountants because *'He did not ask me anything about the previous tax year. He did not ask to see my tax return. I don't recall him asking me about the previous year or when I started business. He did ask me what year he was working on. I said it was the second year of business. They did not ask me about this tax return until 2016.'* Mr. Gajjar accepted that I could take judicial note of the usual professional practices of accountants when preparing annual tax accounts, including consideration of capital allowances, depreciating assets and sums to be carried over into the following year's accounts. I am satisfied to the requisite standard that a competent accountant would wish to consider the previous year's accounts and tax return when seeking to prepare self-employed accounts and in such circumstances AP is not being honest when asserting that Faz Accountancy Services expressed no interest in being provided with information relating to the 2010/2011 tax return.

37. AP's evidence as to how he eventually found out about the erroneous tax declaration is that he was contacted by a friend who was in the process of applying for ILR. His friend's solicitor had suggested that his friend check his tax returns as this was an issue the respondent was known to consider in settlement applications made by Tier 1 (General) Migrants. AP then recalled that he had received an email in January 2012 to which his tax assessment was attached. He had not read it at the time but by typing 'tax return' into his search engine he found the unread email. AP expressly informed me at the hearing that the document attached to the email was that containing the page at [C19] of the bundle. He was then able to present this document to his accountant. He had no other documents from this time to present to his accountants save for his bank statements. He discussed the matter with them, and they asked what goods he had bought that amounted to some £16,000. He did not know, so contacted his cousin who then explained the mistake that had been made. His accountants agreed to amend his tax return and the amendment for AP's tax return for the year ending 5 April 2011 was received by HMRC on 21 January 2016, some two months before he applied for ILR.
38. AP was very vague in his evidence. He was unable to name the author of the relevant email, which he not read since its receipt in January 2012. His evidence was that Mr. Koyyada had been provided with his user number and password so that Mr. Koyyada could complete his tax assessment on the Government Gateway portal. He further confirmed that Mr. Koyyada completed the assessment online. He could not recall who sent the subsequent email to him, though noticeably he did not assert it to be either Mr. Koyyada or HMRC. No copy of the email has been filed with the Tribunal. AP has not been able to provide a coherent explanation as to how a tax assessment completed online by the only other person to have access to his account on the Government Gateway could subsequently be sent as an attachment to him by an unknown third person. A completed assessment is not automatically sent by HMRC to a taxpayer by email after it is 'sent' on the Government Gateway. The version of events being advanced by AP is fanciful and unsustainable. I am satisfied that this is a crude attempt to manufacture a necessary link between his asserted

history of not being aware of the failure to disclose his true self-employed earnings in 2011 with the subsequent amendment of his tax return in 2016, just before he applied for settlement. AP has provided no detail as to who could have sent this document to him. In such circumstances, upon considering the very vague evidence provided by AP, I find that it is unbelievable that some 4 years after receiving an email that he did not open and read at the time he would recall it and upon locating and opening it he would find attached the very document he had not previously checked but related to the tax return that now had to be amended before he applied for settlement. I am satisfied that AP has concocted a purported history that simply cannot withstand even cursory examination. Whilst mindful as to the seriousness of the finding, I am satisfied that there is sufficient basis upon which to find that AP is not being truthful as to the circumstances in which he sought to amend his tax assessment for the year ending April 2011 and is deliberately seeking to deceive the Tribunal.

39. I have significant concerns as to the veracity of Mr. Venumuddala's letter of January 2020. AP relies upon it to establish that early in April 2012 he moved property and as he did not pay Mr. Venumuddala rent the issue as to whether to put rental payments through his accounts did not arise for the 2011/2012 tax year. Thus, he remained in ignorance of the initial error concerning his rent being put through his accounts as a 'good bought for resale or good used'. Beyond his bald assertion as to events, Mr. Venumuddala provides no documentary evidence that he lived at the relevant property in Hounslow, either at all or throughout the relevant period of time. AP explained to me that he was seeking to save money for his wedding and so was aided by living rent free with his relative. He detailed that he continues to use his old address in Manor Park, East London, for correspondence, stating that he believed that he would only reside with Mr. Venumuddala temporarily. However, he detailed the Manor Park address as his correspondence address when completing his tax return on 11 January 2012, some 9 months after he purportedly moved away from that property to reside with Mr. Venumuddala. He was unable to coherently explain as to why he would permit his correspondence to continue to be sent to his former rented accommodation for a period of time after he had moved into the home of a

relative in West London, some 30 or so miles away. I am satisfied to the requisite standard that the letter is simply an exercise in deception undertaken by AP and Mr. Venumuddala who seek to create a falsehood as to AP not paying rent to explain why AP's accountants did not inform him at an early stage that he could not put his housing rent through his accounts. I am satisfied to the requisite standard that AP did not reside with Mr. Venumuddala from April 2011 until just before he left to travel to India for his marriage in 2013. I am satisfied to the required standard that at the date the tax assessment was completed online he was residing at, and paying rent for, the property in Manor Park which he detailed on the assessment.

40. When considering as to whether an innocent error arose in this matter and whether AP can offer an innocent explanation as to events, I am satisfied that AP is an untruthful witness, prepared to rely upon a letter from Mr. Venumuddala that contains untruths and to seek to rely upon evidence from Mr. Koyyada that is patently false. I do not accept to the requisite standard that someone with a knowledge of accountancy such as Mr. Koyyada would put private housing rental payments and telephone costs through accounts as 'costs of goods bought for resale or goods used' and further I do not accept that someone with basic accountancy knowledge would confuse allowable expenses for limited liability companies when preparing accounts for a self-employed person. I do not accept the evidence of Mr. Koyyada and find that he has engaged with AP in seeking to create a falsehood to hide the true state of affairs relating to the filing of the 2010/2011 tax return. The assertion that an email was sent to AP with the 2011 tax assessment attached to it by an unknown person or entity in January 2012 is simply untrue. I am satisfied that AP knowingly filed a false tax return so as to limit his tax liabilities, in full knowledge of the figures previously provided to him by accountants as to his earnings when he applied for further leave to remain in this country. When seeking to provide an innocent explanation before this Tribunal his recounting of events comprises an accumulation of further deceit. He was dishonest to this Tribunal as to the circumstances in which his tax assessment and tax return were filed in January 2012 and was dishonest in his efforts to persuade this Tribunal that he was the subject of

an innocent error by Mr. Kayyada. His continuing dishonesty in his evidence, such as the production of Mr. Venumuddala's letter to the Tribunal establishes his ongoing willingness to exercise deception and strongly evidences a willingness to exercise deception when engaging with authorities in this country, including HMRC. The appellant has wholly failed to provide an innocent explanation. His conduct is dishonest by the objective standards of ordinary decent people, and before this Tribunal he has encouraged family members to provide statements lacking any semblance of truth to aid his case. I am satisfied to the required standard that the respondent could lawfully refuse AP's application for settlement by application of paragraph 322(5) of the Immigration Rules.

41. As to article 8, the Court of Appeal confirmed in GM (Sri Lanka) v. Secretary of State for the Home Department [2019] EWCA Civ 1630 that the Immigration Rules and section 117B of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') are to be construed consistently and that national authorities enjoy a margin of appreciation when setting the weight to be applied to various factors in the proportionality assessment. The test for an assessment outside the Rules is whether a fair balance is struck between competing public and private interests. I am mindful that a proportionality test is to be applied to the circumstances of the individual case. There is requirement for proper evidence.
42. Neither AP nor VR can succeed under paragraph 276ADE of the Rules. They both grew up in India and left their home country when adults. They both have qualifications and skills that they can rely upon when they return: AS v. Secretary of State for the Home Department [2017] EWCA Civ 1284; [2018] Imm. A.R. 169. There is no basis in their assertion that they have lost material ties with India. Whilst AP has been in this country since 2008, the respondent has consistently refused him settlement since 2016 on the basis of his dishonesty. The appellants have provided no evidence capable of establishing their suffering very significant hardship on return to India and I observe that their true concern is losing what they perceive to be the benefits of living in this country: Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932.

43. Their child is not a 'qualifying child' under section 117B(6) of the Nationality, Immigration and Asylum Act 2002. As to the respondent's duty under section 55 of the Borders, Citizenship and Immigration Act 2009, the 'best interests' principle does not mean that it is automatically in the interests of any child to be permitted to remain in this country irrespective of age, length of stay, family background or other circumstances. The child in this matter is aged 2 and has very little connection to his wider community beyond his family and their home. His best interests are to remain with his parents and accompany them to India: *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 197 (IAC); [2013] Imm. A.R. 696.
44. The appellants have only ever enjoyed precarious leave for the purpose of section 117B(5) of the 2002 Act and so limited weight is given to their private life in this country: *Rhuppiah v. Secretary of State for the Home Department* [2018] UKSC 58; [2018] 1 W.L.R. 5536. In assessing the public interest, I observe that AP secured further leave in 2012 through the exercise of deception and he could only sponsor VR's entry into this country because he had secured further leave to remain consequent to such deception. No exceptional circumstances arise in this matter. It is the public interest that the family return to India, and their removal would not be a disproportionate interference in their family and private lives. The appellants' human rights (article 8) appeals are dismissed.

Notice of Decision

45. By means of a decision dated 13 November 2019 this Tribunal set aside the Judge's decision promulgated on 21 March 2019 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007 ('TCE').
46. The decision is re-made, and the appellants' appeals are dismissed.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 21 January 2020

To the Respondent
Fee Award

As the appeals have been dismissed there can be no fee award.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 21 January 2020