



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/03749/2018 (V)

**THE IMMIGRATION ACTS**

Heard at Field House *via Skype for Business*  
On 13 July 2020

Decision & Reasons Promulgated  
On 29 July 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ZUBAIR MOHAMMED  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**DECISION AND REASONS**

**Representation:**

For the Appellant: Ms. J Isherwood, Senior Presenting Officer

For the Respondent: Mr. M Biggs, Counsel, instructed by ATM Law Solicitors

**Introduction**

1. This is an appeal by the Secretary of State. The respondent, whom I shall refer to as 'the claimant', has previously been successful on appeal before the First-tier Tribunal in challenging a decision by the Secretary of State to refuse to grant him settlement under the Immigration Rules on article 8 (long residence) grounds. The decision of Judge of the First-tier Tribunal Oliver ('the Judge') was sent to the parties on 27 September 2019.

2. By a decision dated 27 February 2020 Upper Tribunal Judge Canavan granted the Secretary of State permission to appeal on all grounds.

### **Remote hearing**

3. The hearing before me was a Skype for Business video conference hearing during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in exactly the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.
4. The parties agreed that all relevant documents were before the Tribunal. The video and audio link connected between the representatives throughout the hearing. There was a short period when the link to Field House broke down. Upon the link being resumed between myself and the representatives I identified the point at which contact had been lost and requested that submissions recommence from this point in time. At the conclusion of the hearing both parties confirmed at the hearing had been completed fairly.
5. The claimant remotely attended the hearing. No member of the public joined the hearing remotely or attended Field House.

### **Anonymity**

6. The Judge did not issue an anonymity direction and no request was made by either party for such direction to be issued.

### **Background**

7. The claimant is a national of India who is now aged 38. He arrived in this country as a student on 19 September 2007. He made an in-time application for further leave to remain as a Tier 1 (Post-Study Work) Migrant and was granted such leave, with subsequent variation until 14 March 2016. On 10 March 2016 the claimant applied for indefinite leave to remain ('ILR') as a Tier 1 (General) Migrant. Before this application was considered by the Secretary of State the claimant varied the application on 31 October 2017 to a human rights application seeking ILR on the basis of long residence in the United Kingdom under paragraph 276C of the Immigration Rules ('the Rules').
8. By means of a decision dated 23 January 2018 the Secretary of State refused the application under paragraph 276D of the Rules as the claimant was determined not to meet the requirements of paragraph 276B(ii)(c) and 276B(iii) of the Rules, with reference to paragraph 322(5).
9. The Secretary of State reasoned, *inter alia*:

'In considering your application, information regarding the earnings you have claimed to the Home Office as part of your previous Tier 1 applications were compared with information provided by her Majesty's Revenue and Customs (HMRC) regarding earnings you declared to them for the 2009/10, 2010/11, 2011/12 and 2012/13 tax years.

You submitted a Tier 1 (General) Migrant application for leave to remain on 04 February 2011. In this application you claimed £40,948.06 in earnings over the period 01 January 2010 to 31 December 2010, and you were awarded points based on this income. You claim that these earnings were from salaried employment with PLV enterprises, £8,096.91 for the period 01 May 2010 to 31 December 2010, with Tesco Stores Ltd. £8,336.50 for the period 01 January 2010 to 31 December 2010 and with UHSU £4,966.65 for the period 01 January 2010 to 31 May 2010. You also claimed self-employment earnings of £19,548.00 for the period 01 June 2010 to 31 December 2010.

Your application for leave to remain as a Tier 1 (General) Migrant was supported by a covering letter dated 12 January 2011 written by your accountant, MSCO. In paragraph two and three of the said letter your accountant stated: '*A short set of accounts have been prepared, showing gross taxable income for the period 1 June 2010 to 31 December 2010 to be £19,548.*' '*Therefore, we can state that the total taxable gross income for the last seven months (01/06/2010 to 31/12/2010) for the client is £19,548.*'

The claim period falls into the 2010/11 tax year.

HMRC data shows that for the tax year 2010/11 your PAYE income is as you have declared.

However, HMRC data shows that you declared on your self-assessment tax return for 2010/11 that you had a turnover of £2,000 and a profit of £948.00, but you declared self-employment profit of £19,548.00 for the 7 months period 01 June 2010 to 31 December 2011 when you applied for further leave to remain.

You were invited to and attended an interview on 10 April 2017 as part of the consideration of your Tier 1 (General) application on 10 April 2017. In response to question 37, you stated that due to a discovered discrepancy, in 2016 you submitted an amended tax return to HMRC for the tax year 2010/11. You explained that this discrepancy was due to an entry error by yourself and that you submitted the amended tax return after you had had your previous tax returns checked by an accountant.

When question further in this regard by the interviewing officer, you stated that the error was because you had completed the tax return yourself and it was a human error and that you are not an expert in accountancy.

Your explanation that you have provided for your amended tax returns have not been accepted. As your self-employed earnings form part of your combined income, it is considered that she would have ensured your documentation would have been accurate in order for your tax return to be submitted.'

10. The claimant appealed against this decision to the First-tier Tribunal and his appeal was initially allowed by a decision of Judge of the First-tier Tribunal O'Garro, dated 18 October 2018. The Secretary of State was granted permission to appeal to this Tribunal and consequent to an error of law hearing the decision of JFtT O'Garro was set aside by a decision of Deputy Upper Tribunal Judge Parkes, dated 5 February 2019. The claimant applied for permission to appeal to the Court of Appeal and this

application was refused by Upper Tribunal Judge Rimmington, whose decision is dated 25 March 2019.

### **Hearing Before the FtT**

11. The appeal came before the Judge sitting at Hatton Cross on 8 August 2019. The claimant attended the hearing and gave oral evidence.
12. Before the Judge the claimant detailed in relation to the sole substantial issue in this appeal that he had not used deception in a previous application. He explained that he settled a tax liability in the sum of £1123.40 on 31 January 2012 in the erroneous belief that it related to self-employment and only became aware of the discrepancy after a review was undertaken by his accountants in 2016.
13. The claimant contends that he was aided in the completion of his self-assessment tax return for the year ending 2010/2011 by his immigration advisor, a man called Ishraque. He provided Ishraque with his log-in details for the self-assessment online gateway to enable Ishraque to file his tax return. He confirmed that Ishraque is not a qualified accountant. The Tribunal further understands that Ishraque was acting as an unregulated immigration advisor.
14. At [9]-[10] of the decision, the Judge records the following as a summary of the claimant's evidence as detailed by his witness statement:
  - '9. He went on in the witness statement to mention the difference between declarations to HMRC, where figures must pertain to the given 12 month tax year and those under the immigration rules which allowed applicants to use any continuous 12 month period in the last 15 months from the date of application. In 2010 he had been working in employment on weekdays and weekends and in self-employment in the evenings. He had used his spare time to earn extra income to help his family in India rather than sorting out his tax affairs. He explained how he had been introduced to a man named Ishraque but did not know that he was not a qualified accountant. He had been unaware of the figures submitted by Ishraque to HMRC and had not check them. He had told the respondent that he had filed the tax return himself because Ishraque had told him that the documents were presented in his name and not from any accountancy firm. In effect, Ishraque had taken control over following his tax return. He later came to know that Ishraque was not even a qualified immigration adviser.
  10. He then explained how the error in his tax return had come to his attention. He had been reading online immigration forums to help him to prepare his application and realised that tax returns were integral to the process. He tried to contact Ishraque but learnt via WhatsApp that he had left the country and gone to UAE and could not help. On 18 February 2016 Ishraque emailed him the tax return which she had filed on the appellant's behalf. It was his new accountants who noticed a discrepancy. He had rectified the mistake immediately. His new accountant explained that such errors were very common.'
15. As to the claimant's oral evidence the Judge records, *inter alia*, at [16]:

‘16. In cross-examination he maintained that Ishraque has filled in his tax return. He had employed Ishraque for the previous nearly 4 years as his accountant. He denied that he had signed the tax returns. When he taxed Ishraque over the situation which had arisen, using Skype, Ishraque had accepted that he had made a mistake. He accepted that he had said in his interview that he had done the returns himself, but explained that this took place shortly after his mother died and pointed to his deteriorating health at the time. If he had said that Ishraque had filled it in, he did not think he would have been believed. He did not know if [Ishraque] had been allowed to give immigration advice, but he had believed that he was a proper adviser after being introduced to him by a friend who had studied with him at university.’

16. In allowing the claimant’s appeal the Judge found, *inter alia*, at [25]-[29]:

- ‘25. The central part of the appellant’s explanation rests on his account of his dealings with Ishraque. There is nothing unusual in the context of immigration law in the notion of the dishonest and/or unqualified adviser or accountant. Because the respondent has not questioned the genuineness of the invoices in this case there is no necessary parallel with the typical Operation Cudgegong cases where the applicant is a knowing participant. The bent so-called professional does not need to keep his client in the picture but can advertise simply that he provides a seemingly good service.
26. Having considered all of the evidence I find that I cannot dismiss the appellant’s account of his dealings with Ishraque. That is not the end of the matter, but provides the context in which he claims that he did not realise the falsity of the figures provided to HMRC.
27. One matter not mentioned in the refusal letter is something more familiar to those who have experience of self-employment than those in employment. The appellant has explained that he placed his emphasis on maximising his earnings rather than concentrating on what was essentially paperwork. He did that not in the context of self-employment alone but while holding down 2 other employed positions, working during the working week and also at weekends and at night, in part to support his family in India. It is unclear precisely when his tax return was submitted, but the experience of panic when the deadline approaches is not unusual.
28. It is common, of course, for those facing allegations of dishonesty to blame their accountant and highly convenient when the accountant has left the country and is not co-operating fully, but that does not make the explanation untrue. The departure of the accountant may simply be explained by the fact that he wished to escape prosecution.
29. From my findings it follows that I have made a positive credibility finding in view of what I find to be his plausible account. I have not found evidence of dishonesty which reaches the quality necessary for a finding of dishonesty.’

### **Grounds of Appeal**

17. The Secretary of State filed grounds of appeal, which are detailed in full below:

1. The Tribunal found 'It is common, of course, for those facing allegations of dishonesty to blame their accountant and highly convenient when the accountant has left the country and is not co-operating fully, but that does not make the explanation untrue. The departure of the accountant may simply be explained by the fact that he wished to escape prosecution' (28).
2. It is respectfully submitted its unclear how the Tribunal could reach that finding.
3. The appellant blamed his accountants for errors in his tax returns and the Tribunal accepted this explanation (28). However, the Tribunal did not take account of the appellant's own responsibilities. Before the tax returns were submitted they would have been signed off by the appellant. This would have meant he was aware of the figures relied upon. The Tribunal had no regard to this. If it had done it may well have considered the appellant's character differently.
4. The Tribunal appears to have adopted an unduly sympathetic approach to this case. It is submitted that the appellant *eventually* paid his taxes and he only did so when pressed. If he had not claimed intended (sic) to apply for ILR he would have continued to have avoided paying the correct sum of tax. The Tribunal appears to have taken no account of this.
5. The respondent relies in the case of Abbasi (rule 43; para 322(5): accountants' evidence) [2020] UKUT (IAC).
6. '*We consider that particularly where, as in the present case, and accountant's letter is clearly perfunctory ('... we inadvertently mixed earnings details of two clients ... The client was compensated ... Errors and mistakes can't be ruled out'), the First-tier Tribunal or Upper Tribunal, as the case may be, should expect the accountant in question to attend the hearing, having provided in advance a Statement of Truth, in order to explain in detail the circumstances in which the error came to be made; the basis of nature of any compensation; and whether the firm's insurers and/or any relevant regulatory body have been informed. In the absence of such evidence, the tribunal is unlikely to be able to place any material weight on letters of this kind'* (64).
7. It is respectfully submitted that the position of the respondent in respect of these matters is aligned with the opinion of the President of the Upper Tribunal.'

18. In granting permission to appeal UTJ Canavan reasoned, *inter alia*:

- '2. The grounds are poorly particularised but raise an arguable point that justifies further consideration at a hearing. The judge had the opportunity to hear evidence from the appellant many of his findings regarding the credibility of his account were likely to be open to him to make. However, it is at least arguable that there may be some contradiction in his finding that the accountant might have wanted to escape prosecution that was not adequately explored. The judge arguably failed to consider the inference that could be made from that finding i.e. that the accountant might have left the UK due to unprofessional or fraudulent activity. If there was a possibility that he was involved in fraudulent activity that could affect the credibility of the appellant's evidence, especially considering his admission that he had lied in interview about who completed the tax return.'

### Decision on Error of Law

19. At the commencement of the hearing, both representatives agreed that unlike the term solicitor or independent financial adviser, the term 'accountant' is not protected. Consequently, an unqualified person can hold themselves out to be an accountant. Further, both representatives agreed that Ishraque was not a regulated accountant, but an unregistered immigration adviser who had offered to help the appellant as to his self-assessment tax return for the year ending 2010/2011.
20. Two of the grounds of appeal can be considered at the outset, as they possess no true merit.
21. Whilst not withdrawing the ground, Ms. Isherwood appropriately accepted that the respondent had difficulty in advancing the 'Abbasi' argument identified at paragraphs 5 and 6 of the grounds of appeal, because the decision expressly addressed the approach to be adopted in a paragraph 322(5) appeal where there is reliance upon an accountant's letter. In this matter no such letter from Ishraque was adduced, no doubt because Ishraque was not a regulated accountant. I further observe that the representatives confirmed at the hearing before me that the accounting information provided by professional accountants in this matter was not challenged. The expectation that an accountant attends a First-tier Tribunal hearing to give evidence, as identified by the Tribunal in Abbasi, is directed towards a qualified and regulated accountant. The author of the grounds, who did not represent the respondent before the Judge, and is not Ms. Isherwood, appears to have misunderstood Ishraque to have been acting as a qualified and regulated accountant. Upon cursory consideration of the Judge's decision, and indeed upon consideration of the evidence submitted in this appeal, this is clearly not the case. Consequently, reliance upon the decision in Abbasi is misconceived and no material error of law arises.
22. Paragraph 4 is misconceived. The appellant was not 'pressed' to pay his taxes. His evidence, as accepted by the Judge, is that he belatedly became aware of the error in his tax return and at a date prior to making his application for settlement he voluntarily took steps to amend the error and repay his outstanding tax liabilities. Ms. Isherwood appropriately did not positively advance this ground at the hearing.
23. In granting permission to appeal, UTJ Canavan's reasoning was directed towards paragraphs 1 and 2 of the respondent's grounds of appeal. Upon careful consideration, the Judge's observation at [28] of the decision amounts to no more than an unwarranted musing and does not constitute a finding of fact. It is not helpful that by this stage of the decision the Judge has changed his identification of Ishraque's role from unqualified immigration advisor to accountant. However, when considering the Judge's reasoning in this round such musing, though not to be expected in a judicial decision, does not by itself undermine the reasons for his overall conclusion as to the non-existence of dishonesty which remains tolerably clear.

24. At the hearing the primary focus of representatives' submissions was directed towards paragraph 3 of the Secretary of State's grounds, which I repeat:
- '3. The appellant blamed his accountants for errors in his tax returns and the Tribunal accepted this explanation (28). However, the Tribunal did not take account of the appellant's own responsibilities. Before the tax returns were submitted they would have been signed off by the appellant. This would have meant he was aware of the figures relied upon. The Tribunal had no regard to this. If it had done it may well have considered the appellant's character differently.'
25. Ms. Isherwood advanced several purported failures by the Judge in his reasoning with emphasis upon the failure to engage with documentary evidence confirming the appellant's continued contact with Ishraque consequent to the latter's relocation outside of this country. The respondent contends that certain messages can be read as the appellant seeking advice as to how to address inconsistencies in his interview with the respondent and seeking information as to his tax affairs that should be in his possession but appear to be possessed by Ishraque several years after the self-assessment was filed. I acknowledge that on their face Ms. Isherwood's concerns may have some force in circumstances where the Judge's reasoning is limited in scope and key issues are considered in brief terms.
26. However, Ms. Isherwood accepted that the submissions advanced were not expressly detailed within paragraph 3 of the grounds of appeal. Rather, she requested that I conclude that they were implicit in the sentence, '*... the Tribunal did not take account of the appellant's own responsibilities.*' She further accepted that if her submissions were incapable of being read into paragraph 3, and there being no application to amend grounds, then this ground of challenge must fail.
27. When considering grounds of appeal, words are to be given their ordinary natural meaning, and to be construed as they are understood in common language. No technical words are used in paragraph 3 and I am mindful that a word or phrase may have several ordinary meanings. It is appropriate to consider substance, not merely form. Consequently, the paragraph should properly be read as a whole, rather than one sentence be considered in isolation.
28. I am satisfied that 'responsibilities' is the plural of 'responsibility' and the natural meaning of the latter is the state of being responsible - having a duty - over something or someone. I am further satisfied that the continuation of the paragraph is consistent with this being the meaning adopted by the author of the grounds, '*[b]efore the tax returns were submitted they would have been signed off by the appellant. This would have meant he was aware of the figures relied upon. The Tribunal had no regard to this.*'
29. On the application of the natural meaning of the words employed, there is no merit in the ground expressly advanced because the Judge did have regard to the signing of the tax return. He accepted that the document was signed by Ishraque and not the appellant. He further accepted the appellant's evidence as to the circumstances



leading him to be unaware of the figures submitted by Ishraque and as to why he had not checked them. The Judge considered such evidence in light of the appellant's relevant responsibilities. Whilst others may reasonably have concluded otherwise; it has not been asserted by the respondent that such decision is irrational on the evidence before the Judge. Rather, the ground does not engage with the Judge's conclusion on this issue, at [23], [26]. The author of the grounds simply proceeds with a reasons challenge, and in so doing erroneously fails to engage with the reasons provided for the findings of fact made. Such approach could be said to exhibit a lack of care, and with her usual adroitness Ms. Isherwood did not seek to advance the contention that the Judge had given no consideration to the circumstances surrounding the signing-off of the self-assessment.

30. The remaining question for the Tribunal is whether Ms. Isherwood's wider submissions can be read into paragraph 3. It is abundantly clear that they cannot be. Paragraph 3 is a precise and narrow challenge to an identified issue namely a purported failure by the Judge to consider the appellant's application of his own responsibilities when signing the self-assessment tax return. It cannot reasonably be read to encompass a wider challenge as to the Judge's consideration of messages between the appellant and Ishraque that post-date the signing of the self-assessment, nor can it be read to encompass a general challenge as to the failure by the Judge to provide sufficient reasons when accepting the appellant's honesty as to the circumstances in which information was provided to the Secretary of State and HMRC. Consequently, Ms. Isherwood's submissions cannot be read into paragraph 3 and so this ground of challenge must be dismissed.
31. As observed by UTJ Canavan the respondent's grounds are poorly particularised and as I have observed above at least one ground is misconceived. Whilst I tentatively observe that there may possibly be several arguable challenges to the Judge's decision, particularly as to there being no express consideration of documents relied upon by the respondent in a decision that primarily concentrates upon the evidence advanced by the claimant, there was no application by the respondent to amend her grounds of appeal in this matter. Further, as accepted by Ms. Isherwood, the respondent is precluded upon seeking to advance a 'Robinson obvious' point: *Miftari v. Secretary of State for the Home Department* [2005] EWCA Civ 481, per Maurice Kay LJ, at [39]. In such circumstances the Tribunal may only consider the grounds of appeal advanced by the respondent upon which permission to appeal has been granted and for the reasons detailed above the grounds relied upon in this matter lack merit and are dismissed. Consequently, the decision of the First-tier Tribunal therefore stands.

### **Notice of Decision**

32. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

33. The decision of the First-tier Tribunal, dated 27 September 2019, is upheld and the respondent's appeal is dismissed.

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

Dated: 16 July 2020