



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

Appeal Number:
UI-2022-001750 [HU/06937/2020]
UI-2022-001752 [HU/06938/2020]
UI-2022-001748 [HU/01343/2021]
UI-2022-001753 [HU/19067/2018]
UI-2022-001749 [HU/01344/2021]

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 03 May 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

Secretary of State for the Home Department

Appellant

and

**ML
FA
MML
MAL**

Respondents

Representation:

For the appellant: Mr Mullen, Senior Home Office Presenting Officer
For the respondent: Ms Stein, Counsel instructed by Rayan Adams Solicitors

Heard at Employment Tribunal, Edinburgh on 26 April 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 9 September 2021 of First-tier Tribunal Judge Rea which allowed appeals brought under Article 8 ECHR.
2. For the purposes of this decision, I refer to the Secretary of State for the Home Department as the respondent and to ML, FA, MML and MAL as the appellants, reflecting their positions before the First-tier Tribunal.

3. ML is a national of Pakistan, born on 31 August 1982. He came to the UK on 27 August 2007 as a student. He was granted further leave as a Post Study Worker until 3 March 2011. He was granted leave as a Tier 1 migrant until 26 February 2016.
4. FA is a national of Pakistan, born on 7 June 1983. She is the wife of ML. She came to the UK in 2009 as the dependent of ML who was, at that time, a Post Study Worker.
5. MML is a national of Pakistan, born on 10 October 2006. She is the oldest child of ML and FA. She came to the UK in 2009 with FA. MML made an application for leave in her own right on 23 May 2018. The application was refused on 5 September 2018. Her appeal (reference UI-2022-001753 (HU/19067/2021 in the First-tier Tribunal)) against that decision was been joined by the First-tier Tribunal to those of her father, mother and younger sister, MAL. MML also had an appeal as a dependent of ML (reference UI-2022-001748 (HU/01343/2021 in the First-tier Tribunal)), however, so when this matter came before Judge Rea she had two appeals for MML before her, albeit addressing the same issues.
6. MAL is a national of Pakistan, born on 19 April 2008. She is the second child of ML and FA. MAL was born in Pakistan, coming to the UK with her mother in 2009.
7. ML and FA have two more children, both of whom were born in the UK. They are AL, born on 8 October 2015 and MUL, born on 7 September 2020. AL has a diagnosis of autism. AL and MUL do not have independent appeals but are dependents of their parents in this matter.
8. On 22 February 2016, ML applied for indefinite leave to remain (ILR) with FA, MML and MAL as his dependents. The respondent refused that application in a decision dated 14 August 2020. The respondent considered that the appellant had been dishonest in his dealings with HMRC and/or the respondent and found that paragraph 322(5) of the Immigration Rules applied as it was undesirable to permit the appellant to remain in light of his conduct.
9. In particular, the respondent found that the difference in the amount of self-employed income in the tax year 2009/2010 declared to HMRC was £30,942 lower than that declared to the respondent for a similar period. The respondent found that the difference in the amount of self-employed income in the tax year 2012/2013 declared to HMRC was £21,365 lower than that declared to the respondent for a similar period. The appellant maintained that he had relied on his accountants, had discovered the mistake in 2015 and had remedied the underpayments of tax. The respondent did not accept the appellant's explanation of this discrepancy.
10. The respondent also found that it was not credible that the appellant's income would fluctuate as much as it did, the periods of high income coinciding with applications for further leave to remain. She did not find it

credible that the appellant's clients would pay him in cash. She found that the wide variations in payments from clients suggested that the business was not genuine. It was not credible that small businesses a long way from the appellant would use his services. He did not provide invoices to assist in assessing whether the business was genuine. There were other discrepancies between the appellant's accounts and the information he gave about his business, for example the amounts paid to an accountant and the amount of cash withdrawn for business expenditure. The respondent was concerned that the appellant declined to address some of the issues she raised, the appellant advising her to contact his clients for explanations. She considered that it was proportionate for the family to return to Pakistan together given his conduct and notwithstanding the length of time that the family had been in the UK.

11. Judge Rea heard from the appellant and two witnesses who stated that they had used the appellant as a business consultant. The respondent was not represented and so there was no cross-examination. In paragraph 27 Judge Rea accepted in bare terms that the appellant's explanation as to how he discovered the mistakes in the declaration of income to HMRC was credible. She accepted that he had relied on his accountants when making tax returns in 2009/10 and 2012/13. She also found that it was normal for the income of a self-employed person to fluctuate and, in paragraph 29, that the appellant had not exaggerated his income to bolster applications for leave to remain. She found the evidence of the appellant's witnesses as to the appellant assisting them in their businesses and paying him cash to be credible; see paragraph 29. The judge concluded that the respondent had not shown that it was appropriate to apply paragraph 322(5). In paragraphs 47 and 52 the First-tier Tribunal indicated that where the respondent had been wrong to find that the appellant had been dishonest and in light of the family circumstances, the refusal of leave was as disproportionate interference with their rights under Article 8.
12. Permission to appeal against the decision of Judge Rea was initially refused by First-tier Tribunal Mills in a decision dated 1 December 2021. Upper Tribunal Judge Pickup granted permission to appeal in a decision dated 17 October 2022.
13. The respondent maintained that the First-tier Tribunal had failed to make findings on material matters, in particular the discrepant earnings declared to HMRC.
14. I found that the respondent's grounds were made out. Given the extent of the discrepancy in the declarations of income here, it was not sufficient for the First-tier Tribunal to make a bare finding that the appellant had relied on his accountants and accept the account of how the discrepancies were discovered shortly before his application for ILR. The First-tier Tribunal could be expected to apply the reported case of Abbasi (rule 43; para 322(5): accountants' evidence) [2020] UKUT 00027 (IAC) which set out in the headnote:

“In a case involving a decision under paragraph 322(5) of the immigration rules, where an individual relies upon an accountant’s letter admitting fault in the submission of incorrect tax returns to Her Majesty’s Revenue and Customs, the First-tier or Upper Tribunal is unlikely to place any material weight on that letter if the accountant does not attend the hearing to give evidence, by reference to a Statement of Truth, that explains in detail the circumstances in which the error came to be made; the basis and nature of any compensation; and whether the firm’s insurers and/or any relevant regulatory body have been informed. This is particularly so where the letter is clearly perfunctory in nature.”

15. The letter from the accountants’ dated 3 June 2020 explaining the discrepancies in declarations amounting to over £50,000 was perfunctory:

“We refer to above and writing to confirm that our firm acts as accountant for the above and we prepared his accounts and filed tax returns.

In 2016 Mr. Latif requested SA302 from HMRC for his mortgage application and on getting the same it revealed that his income was not showing in accurate amount (sic). He contacted us about this matter in to (sic) our notice. As we inquire into matter (sic) we found that his income was understated as bank receipt summary for few months were not included in the profit & loss account due to clerical error by a junior staff member.

After discussing this with Mr. Latif we send the revised tax returns to HM Revenue to Customs and accepted (sic) by HM Revenue & Customs.

We apologise for any inconvenience this may have caused. If you have any further questions regarding this matter, please feel free to contact us.”

16. There was no oral evidence from the accountants on what was, at best, a serious incidence of professional negligence. There was no material supporting the appellant’s claim that the discrepancy was discovered in connection with his wish to obtain a mortgage. There was no detail even beginning to explain how failing to include a “few months” of financial information had led to a discrepancy of the magnitude that occurred here.
17. It was not open to the First-tier Tribunal to merely accept the appellant’s account and limited evidence of the accountants as to how the discrepancies occurred without taking into account the guidance in Abbasi and making findings on the weight that could be placed on the letter from the accountant and, having done so, how that featured in the overall assessment of whether it had been shown that the appellant was dishonest. The incorrect approach taken in the assessment of dishonesty amounts to an error on a point of law. It is central to the assessment of dishonesty that had to be made here. Notwithstanding any of the other findings made by the judge on whether the appellant was running a genuine business, the outcome of the decision could have been different if a proper approach had been taken to the evidence on the discrepant tax returns and declarations of income made to the respondent.

18. The unlawful finding that the appellant had not been dishonest also undermines the assessment made under Article 8 ECHR which must also be set aside. Where the core assessments concerning the application of paragraph 322(5) and proportionality under Article 8 must be remade, the appropriate disposal is for the appeal to be remitted to the First-tier Tribunal.

Notice of Decision

19. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade afresh in the First-tier Tribunal.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 26 April 2023