



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/10978/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> June 2016

Decision & Reasons Promulgated  
On 1<sup>st</sup> July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

DIPAN JAGDISHCHANDRA PATEL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr B Hawkin of Counsel instructed by Paul John & Co Solicitors  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge Fox of the First-tier Tribunal (the FTT) promulgated on 22<sup>nd</sup> October 2015.

2. The Appellant is an Indian national born on 20<sup>th</sup> October 1983 who applied for leave to remain in the United Kingdom as a Tier 1 (General) Migrant under the Points Based System.
3. The application was refused on 6<sup>th</sup> March 2015 with reference to paragraph 322(1A) and (2) of the Immigration Rules. The Respondent contended that when the Appellant had applied for leave to remain he had claimed points under Appendix A of the Immigration Rules for having previous earnings of £4,986.42 from employment with Accountax Solutions and submitted wage slips in support.
4. The Respondent pointed out that during a prosecution of various individuals at Harrow Crown Court (not including the Appellant) the evidence of the genuineness of Accountax Solutions was tested, and it was found that the company existed with no genuine trading presence and was founded solely for the purpose of providing false evidence of earnings. Therefore the Appellant had used false representations in claiming to have earnings from that company. In addition it was contended that the Appellant had used false representations for the purpose of obtaining a previous variation of leave.
5. The appeal was heard on 30<sup>th</sup> September 2015. There were two issues before the FTT, one related to the refusal under the Immigration Rules, and the other related to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). The FTT decision records that the parties agreed that the first issue of false representations would proceed by way of submissions only, and evidence would be heard from the Appellant and his wife in relation to Article 8.
6. The FTT found that the Respondent had discharged the burden of proof in relation to the issue of false representations, and the appellant's account was found to be incredible. The appeal was dismissed under the Immigration Rules.
7. The FTT, when considering Article 8, found that the Appellant's credibility had been damaged because of the findings made against him in relation to the issue of false representations, and found that family life did not exist between the Appellant and his wife. Even if family life did exist, the FTT found that it would be proportionate for the Appellant to leave the United Kingdom and make an entry clearance application from India. The Article 8 aspect of the appeal was also dismissed.
8. The Appellant applied for permission to appeal to the Upper Tribunal relying upon two grounds which may be summarised as follows.
9. Firstly in relation to the Immigration Rules it was contended that the FTT had erred by failing to make sustainable findings with adequate reasons. It was contended that the FTT had failed to set out what evidence justified the finding that the Appellant had made false representations or used deception. The FTT relied upon sentencing remarks made by His Honour Judge Barklam dated 19<sup>th</sup> June 2014 who referred to the profile of an individual who would be engaged with the fraudulent company. It was contended that the FTT had placed disproportionate weight on the profile remarks. It was further contended that the FTT had failed to adequately explain why

the Appellant was linked to the convictions relied on by the Respondent or how the activities of Accountax impacted on the Appellant. It was submitted that the FTT had not explained how there was a link between the activities of the individuals who had been convicted following a Crown Court trial, and who were referred to in the sentencing remarks, and the Appellant.

10. The second ground of appeal submitted that the FTT erred in considering Article 8. The FTT had failed to take into account that the Appellant had acquired more than ten years' lawful residence. The FTT erred by relying upon the flawed credibility findings made in relation to the issue of false representations. The FTT also unreasonably made findings that the Appellant's wife knew of his fraudulent activity, when there was no evidence to substantiate such a finding.
11. Permission to appeal was granted by Judge Brunnen of the FTT in the following terms;
  - “2. The grounds on which permission to appeal is sought submit that the judge erred in law in that he failed to give adequate reasons for his findings on the issue of the Appellant making false representations and being involved in criminal activity. This ground is arguable.
  3. The grounds submit that the judge erred in law in considering the appeal under Article 8 in that his consideration of it was influenced by his findings on the other issue. This is also arguable.”
12. Following the grant of permission the Respondent lodged a response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In brief summary it was contended that the FTT had made no material error of law. It was contended that detailed and sustainable reasons for findings had been given and the grounds amounted to a disagreement with the findings that had been made, but disclosed no error of law.
13. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

### **The Appellant's Oral Submissions**

14. Mr Hawkin adopted the grounds contained within the application for permission to appeal, and submitted that the FTT decision is seriously flawed.
15. I was asked to note that the Respondent's refusal decision gave only one reason for a refusal of the application, that being that Accountax Solutions had been found in the course of a Crown Court trial to have no genuine trading presence, and had been founded solely for the purpose of providing false evidence of earnings. Mr Hawkin submitted that the FTT had made no finding on this central issue. I was asked to note that it was common ground that the Appellant had not been a defendant in the Crown Court trial, and he had never been questioned by the police or the Respondent, in relation to his employment with Accountax Solutions.

16. I was referred to the prosecution opening note which had been prepared for the Crown Court trial, and which is contained within the Respondent's supplementary bundle. At paragraph 168, the prosecution accepted that there was payment to Accountax for genuine work. This therefore conflicted with the stance taken by the Respondent in the refusal letter. In addition the judge's sentencing remarks at page 5 paragraph (d) indicated that "there was a huge volume of business undertaken by these companies which was entirely legitimate."
17. There was therefore a conflict between findings made in the Crown Court trial, which indicated that Accountax did have some genuine trading activity, and the contention by the Respondent in the refusal that there was no genuine trading presence. Mr Hawkin submitted that the FTT had erred by failing to make findings on this issue and had therefore failed to deal with the central issue in the appeal.
18. It was further submitted that findings made by the FTT at paragraphs 40-44 related to issues that did not form part of the case against the Appellant. I was asked to note that the parties had agreed that the issue of false representations would be dealt with by submissions only, but the FTT had then proceeded to make findings on issues that had not been raised by the Respondent.
19. With reference to paragraph 47 of the FTT decision Mr Hawkin submitted that the FTT had not explained how the Appellant's profile fitted with the profile referred to by the sentencing judge at page 1 paragraph (f) of the sentencing remarks.
20. With reference to Article 8 Mr Hawkin submitted that the FTT had not taken into account that the Appellant had more than ten years' continuous lawful residence. The FTT had speculated at paragraph 57 in finding that the Appellant's wife would be aware that he had not engaged in legitimate employment with Accountax Solutions. The FTT had also erred by basing Article 8 findings, upon flawed credibility findings made in relation to the issue of false representations.

### **The Respondent's Oral Submissions**

21. Mr Tarlow relied upon the Rule 24 response in its entirety. I was asked to find that the FTT had made findings which were open to make and based upon the evidence that had been provided. For example, at paragraphs 44-45, the FTT was entitled to find that it was unusual, if the Appellant had genuine employment, that he should have resigned from such lucrative employment.
22. Mr Tarlow submitted that taken as a whole, the decision of the FTT in relation to the Immigration Rules and Article 8, is sustainable.

### **The Appellant's Response**

23. Mr Hawkin submitted that because it had been agreed that the issue of false representations would be dealt with by oral submissions, the FTT had acted unfairly by considering and making findings on matters not raised by the Respondent in the refusal decision.

24. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

25. The principal challenge to the FTT decision relates to inadequacy of reasoning therefore for ease of reference I set out below the headnote to Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC);

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

26. I therefore apply the principles set out above when considering this decision.

27. I do not agree with the oral submission made on the Appellant's behalf, that the FTT made no findings at all regarding Accountax Solutions, and the Respondent's contention that there was no genuine trading presence. The FTT set out at paragraph 50 that it was acknowledged that huge volumes of business were undertaken in a legitimate manner by the company. The FTT found, however that the Appellant did not fall in that category.

28. Therefore the FTT did not agree with the Respondent's contention in the refusal decision, that Accountax had no genuine trading presence, which was the sole reason given by the Respondent for finding that the Appellant had made false representations and used deception.

29. The FTT nevertheless found that the Respondent had been correct to refuse the application for leave to remain, and had proved that the Appellant had made false representations and used deception. Having carefully analysed the evidence and the FTT decision, I do not find that adequate reasons have been given for this conclusion, and in my view a reading of the decision by the Appellant would not enable him to understand why his appeal has been dismissed. I reach this conclusion for the following reasons.

30. In paragraphs 40-43 the FTT finds that the Appellant's wage slips are not credible and that there was no reliable evidence to demonstrate that the Appellant was entitled to a commission because in his witness statement he had stated that he worked in an administrative function. No evidence was given by the Appellant on this issue because this was dealt with by submissions only, and there is no indication in the Respondent's refusal decision that this point had been taken against the Appellant. Therefore the FTT had made findings against the Appellant on an issue not raised in the refusal, without hearing any evidence, and had reached findings of incredibility, without giving adequate reasons. I do not find that any adequate explanation has been given by the FTT for concluding that it was not reasonable to expect the Appellant not to receive some element of commission. This was not an

issue that appears to have been considered by either party, and was not adequately considered or analysed by the FTT. This finding, in my view, is unsafe.

31. At paragraphs 44-45 the FTT finds it incredible that the Appellant would have resigned from his employment, as it appeared to be the most lucrative employment that he had. Again this was not an issue raised in the refusal, and no evidence was heard on this point. The Appellant's explanation in his witness statement was that he had taken employment with Accountax because the company indicated that they would support him in his aim of gaining an ACCA qualification. He resigned because he was subsequently told that this support would not be given. This explanation has not been adequately analysed, and sustainable reasons have not been given for finding that it was difficult to understand the Appellant's decision to resign if his employment was genuine.
32. I find no adequate reasoning contained within paragraph 46 in relation to the finding that it was not credible that the Appellant was able to engage in the employment activity claimed.
33. The profile referred to in the sentencing remarks relates to highly qualified people engaged in unskilled work in the service sector, such as jobs in supermarkets, cinemas, food and petrol stations. It is correct that the appellant did have employment with a supermarket (Netto) but he also had employment with Santander Bank, therefore it is unsafe to place substantial weight upon the Appellant fitting a generalised profile, and concluding as the FTT did in paragraph 47, that "it is more likely than not that the Appellant was actively engaged in and intended to benefit from the company's fraudulent activities."
34. For the reasons given above, I conclude that the FTT materially erred in law in considering the issue of false representations and deception.
35. I find that the conclusions reached by the FTT on the issue of false representations and deception also infected consideration of Article 8. At paragraph 55 the FTT records that the Appellant's credibility is damaged by reason of the findings made in relation to the issue of false representations. I accept the submission made on the Appellant's behalf that the FTT engaged in speculation at paragraph 57 in finding that the Appellant's wife was aware that he had not engaged in genuine employment activities with Accountax Solutions. I therefore conclude the Article 8 consideration is flawed in law and should also be set aside.
36. When I indicated that I was reserving my decision in relation to error of law Mr Hawkin submitted that if an error was found, the appeal should be remitted back to the FTT to be heard afresh. Mr Tarlow was of the view that the appeal could be dealt with by the Upper Tribunal.
37. I have considered paragraph 7.2 of the Senior President's Practice Statements. As no findings are preserved, I find it is appropriate to remit the appeal back to the FTT, because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be re-made.

38. The appeal will be heard by the FTT, and the parties will be advised of the venue, time and date in due course. The appeal is to be heard by an FTT judge other than Judge Fox.

**Notice of Decision**

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

**Anonymity**

No anonymity order was made by the FTT and there was no application to the Upper Tribunal for anonymity. I see no need to make an anonymity order.

Signed

Date 20<sup>th</sup> June 2016

Deputy Upper Tribunal Judge M.A.Hall

**TO THE RESPONDENT  
FEE AWARD**

The issue of any fee award will need to be considered by the FTT.

Signed

Date 20<sup>th</sup> June 2016

Deputy Upper Tribunal Judge M.A.Hall