



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/05379/2018**

**Appeal Numbers:**

**HU/08787/2018**

**THE IMMIGRATION ACTS**

**Heard at Newport**

**Decision & Reasons**

**On 15<sup>th</sup> November 2018**

**Promulgated**

**On 20<sup>th</sup> December 2018**

**Before**

**VICE PRESIDENT M OCKELTON  
DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MR A A (FIRST APPELLANT)  
MRS A H (SECOND APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Sharma, instructed by Anwan Legal Associates  
For the Respondent: Mr Howells, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellants born on 10<sup>th</sup> June 1982 and 4<sup>th</sup> November 1989 respectively are both citizens of Pakistan. They are married. The first Appellant had applied for indefinite leave to remain as a Tier 1 Migrant on 19<sup>th</sup> April 2016 and later varied that application for indefinite leave based on ten years' lawful residence. The Respondent had refused that application on 8<sup>th</sup>

February 2018. The second Appellant had applied for leave to remain on the basis of family life with the first Appellant and her application was also refused. The Appellants both appealed the Respondent's decision and their appeals were consolidated and heard together at Newport on 2<sup>nd</sup> May 2018 before Judge of the First-tier Tribunal Powell. The judge had allowed their appeals under Article 8 of the ECHR.

2. The Respondent had made application for permission to appeal on 21<sup>st</sup> May 2018 and that permission had been granted on 30<sup>th</sup> July 2018. The grant of permission noted that it was arguable that the judge's generous ultimate conclusions appear to run counter to several justifiably adverse findings and it was not clear why the appeals were allowed. The Appellants had submitted a Rule 24 response on 14<sup>th</sup> August 2018.

### **Submissions on Behalf of the Respondent**

3. Mr Howells made submissions in line with the Grounds of Appeal. Essentially he noted that in the judge's decisions at paragraphs 24 to 44 he had made findings unfavourable to the Appellant and it was submitted that the evidence had been tested before the judge and although at paragraph 42 the judge had found the Appellant plausible that was despite a number of other adverse credibility findings. It was submitted the judge was wrong in the way that he had found innocent explanation or plausible explanation based on the evidence. Essentially Mr Howells conceded whilst the Grounds of Appeal were not framed in such terms essentially his argument was that the judge had acted irrationally in reaching his conclusion.
4. It was further submitted that the judge had placed weight on the position of HMRC and that a refusal under paragraph 322(5) was available to the Respondent even if HMRC had taken no action. It was accepted the judge was entitled to look at the action or inaction taken by HMRC but on the other hand there was no evidence that they were aware the Appellant had given a different account of his financial state to the Home Office.

### **Submissions on Behalf of the Appellants**

5. Mr Sharma referred us to the Rule 24 response and adopted that as the basis of submissions. It was submitted that the judge had found that the Appellant had not deceived the Respondent and therefore it was unnecessary for the judge to decide on the question of undesirable within the terms of paragraph 322(5). It was said the judge had directed himself properly to the burden of proof in this case and had found that the Respondent had discharged the evidential burden and thereafter had looked at whether the Appellant's account was basically plausible. The judge had found that to be the case and thereafter concluded the Respondent had not discharged the legal burden of proof. It was submitted that was a proper course of action to have taken and matters were properly reasoned within the decision. Further it was said the judge had not relied totally on the position of HMRC but had looked at other factors.

6. At the conclusion we reserved our decision which we now provide in writing.

### **Decision and Reasons**

7. The Appellant's application for indefinite leave to remain on the basis of ten years' lawful residence had been refused by the Respondent essentially on the single ground under paragraph 322(1A) with reference to paragraph 322(5) of the Immigration Rules, namely that the Appellant's presence in the UK was undesirable as a result of his alleged deception some years previously. That related to the assertion that he had provided differing income figures in his tax return to HMRC and in his application for a visa to the Home Office.
8. The judge had correctly identified the issue in this case and the relevant evidence in respect of that matter. He had at some length set out the burden and standard of proof where such assertions of deception were made by the Respondent and the shift in such burden of proof.
9. He had found at paragraph 25 that the evidence disclosed in his judgment, that the Respondent had discharged the evidential burden. He had thereafter at paragraphs 27 to 42 examined the evidence and explanations put forward by the Appellant. At paragraph 42 he concluded that "the Appellant has provided an innocent explanation that satisfies the minimum level of plausibility".
10. Thereafter he had examined whether the Respondent had shown that that innocent explanation should be rejected and whether therefore the Respondent discharged the legal burden. He had looked at the relevant evidence in not insignificant detail. He concluded at paragraph 61:

"Notwithstanding my suspicions and the rather poor state of the Appellant's case before me, mindful that the Appellant does not have any legal burden to discharge, I find that the Respondent has not discharged the legal burden on the balance of probabilities. I cannot reject the Appellant's minimally plausible explanations."
11. Mr Howells conceded before us that his submissions were essentially that it was irrational for the judge to have reached the conclusions that he did based on the evidence. An irrational conclusion was not the conclusion in this case. The judge was mindful of the legal tests applicable. He was aware of the salient evidence in this case and whilst not required to deal with each and every matter had adequately considered all relevant facts and provided reasons for his findings. He had approached that evidence with care and in a fair manner. Whilst it could not be said that all judges would necessarily have reached the same conclusion it was not an irrational conclusion that was reached by the judge and does not disclose a material error of law.

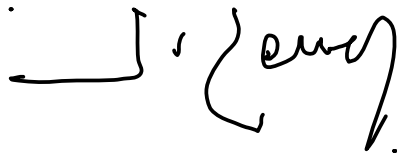
### **Notice of Decision**

12. There was no material error of law made by the judge in this case and we uphold the decision of the First-tier Tribunal.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Deputy Upper Tribunal Judge Lever

Date

