



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03493/2018
HU/11760/2018
HU/11768/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18 January 2019

Decision & Reasons Promulgated
On 7 February 2019

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FARAH [A] (FIRST CLAIMANT)
ASAD [A] (SECOND CLAIMANT)
[A A] (THIRD CLAIMANT)
(ANONYMITY DIRECTION NOT MADE)

Claimants

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondents: Mrs R Bagral, Counsel instructed by Marks & Marks Solicitors

DECISION AND REASONS

1. The appellant, hereafter the Secretary of State for the Home Department, has permission to challenge the decision of Judge Mill of the First-tier Tribunal dated 20 September 2018 allowing the appeal of the respondent, hereafter the claimant,

against the decision made on 9 January 2018 refusing her leave to remain. The first claimant is a citizen of Pakistan, as are the second and third claimants who are her husband and child respectively.

2. The basis of the refusal by the Secretary of State for the Home Department (SSHD) was that the claimant's application for long residence was to be refused because she had used deception in respect of her tax affairs. The SSHD therefore refused the application under paragraph of the Immigration Rules with reference to paragraph 276B(ii)(c), asserting that it would be undesirable for the first claimant to be given indefinite leave to remain on the grounds of long residence taking into account her personal history including character, conduct, associations and employment record. The SSHD additionally relied upon the general grounds of refusal contained within paragraph 322(5).
3. The Secretary of State's position was that the first claimant had made false declarations within her tax returns for the years ending in April 2011 and April 2013. It was stated that the first claimant either falsely inflated her income for the purposes of her immigration applications for those years, or alternatively declared less taxable income to HMRC so as to avoid payment of tax. The originating facts in relation to the declaration to HMRC are not in dispute. In the first claimant's application dated March 2011, which was an application for leave to remain under Tier 1 (General) Migrant, she claimant claimed to have had previous earnings totalling £40,780. In terms of the declaration to HMRC by way of her tax return for the same period, the total declared was £13,659. Within the first claimant's application dated 16 May for leave to remain as a Tier 1 (General) Migrant she claimed to have had previous earnings of £37,043. The total however originally declared to HMRC for the purposes of her tax return amounted to £22,729.
4. The First-tier Tribunal Judge concluded that the SSHD had not discharged the burden of proof on her to show that the first claimant had used deception in her tax returns. The Secretary of State's grounds contend that in so finding the judge erred because the judge had essentially absolved the first claimant of blame for the discrepancies which amounted to £10,000 by accepting her account that her accountant was to blame for the discrepancies in her declared income. It was contended by the SSHD that it was incorrect of the judge to find that the first claimant's accountant was to blame for the large discrepancies given that she was ultimately responsible for her own tax affairs, and it was stated that the first claimant could not possibly be ignorant of such large discrepancies in the figures provided.
5. I am grateful to both parties for their submissions. Both quite properly made reference to the decision of the Upper Tribunal in the case of **R (on the application of Khan) v Secretary of State for the Home Department** [2018] UKUT 00384 wherein Mr Justice Spencer gave guidance on the proper approach to be taken in cases concerned with paragraph 322(5) of the Immigration Rules.

6. I am not persuaded by the SSHD's grounds. The principal difficulty I have with those grounds is that they make no challenge as such to the positive credibility findings of the judge. At paragraph 18 the judge stated that he was satisfied on the totality of the evidence available that the first claimant and her husband were credible and were reliable sources of evidence. At paragraph 30 the judge stated that he accepted all of the first claimant's explanations for the discrepancies in the amounts declared to HMRC, as opposed to those declared to UKVI, as credible. At paragraph 38 the judge concluded that the first claimant in all the circumstances had provided a wholly credible explanation for the discrepancy between the income disclosed to HMRC on the one hand, and to UKVI [in the context of her immigration applications] on the other. The judge stated "I am satisfied there was no false inflation of the income previously stated for the purposes of the former immigration applications and that the ten year period is well and lawfully founded".
7. Given the absence of any challenge to the very positive credibility findings of the judge, I see no force in the SSHD's contentions that the judge wrongly absolved the claimant of blame for the discrepancies and that the judge effectively accepted the argument that accountant error could be treated as sufficient. It is clear from the guidance given in the Khan case that in assessing whether the tax returns disclose deceitful or dishonest behaviour as opposed to mere carelessness a number of factors have to be considered. It is not alleged by Mr Tarlow that the judge failed to consider all the relevant factors set out in the head note to the case of Khan. The written grounds contend that at paragraph 36 the judge erroneously treated as decisive the fact that the HMRC did not raise any allegation against the first claimant that she had attempted to deceive them. It is certainly correct that the judge treated this lack of allegation by HMRC as a relevant consideration; however there is nothing in the decision of Khan which identifies treating such a factor as a relevant factor to be an error of law and I am not persuaded that the judge in this case gave it undue weight as a consideration.
8. For the above reasons I conclude that the judge did not materially err in law, and accordingly that the decision of the judge to allow the appeals of the three claimants against the refusal of long residence by the SSHD should be upheld.

No anonymity direction is made.

Signed

Date: 3 January 2019



Dr H H Storey
Judge of the Upper Tribunal