Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03532/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 January 2019	**On 25 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SHERAZ AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 1 May 1977. On 12 April 2016 he made an application for leave to remain based on ten years' long residence. This application was refused on 23 January 2018 with reference to paragraph 322(2) of the Immigration Rules, i.e. the Appellant had made false representations for the purpose of obtaining leave to enter. The application was also refused with reference to paragraph 322(1A), which is in mandatory terms where false representations have been made or false information or documents have been submitted.

2. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Roots for hearing on 5 September 2018. In a Decision and Reasons promulgated on 5 October 2018 the judge dismissed the appeal, finding that the Respondent had discharged the burden of showing that the Appellant had made false representations in respect of his two Tier 1 applications in 2011 and 2013.

3. Permission to appeal was sought in time on the basis of the following grounds.:

   (1) Firstly, that the judge had incorrectly applied the law at [13] where it was submitted that the judge's reasoning was circular in that he found even if the Appellant had provided a credible explanation then that explanation was rebutted by the initial evidence used by the Secretary of State to satisfy the initial burden, see also [51] and the decision in Shen [2014] UKUT 236 (IAC),

   (2) secondly, at [17] the judge failed to give proper reasons and placed considerable weight on the fact that the Appellant has an MBA,

   (3) thirdly, in making irrational findings and failing to properly articulate reasons relating to the oral evidence at [21], [22], [23], [24], [29], [30], [32], [39], [42] and [45]; and

   (4) fourthly, that the judge's findings at [35] were procedurally unfair because his concerns regarding the documentary evidence had not been put to the Appellant in order to give him the opportunity to comment and likewise, in respect of the accountants' evidence recorded at [44] it was asserted that the judge had erred in failing to look at the evidence set out in the bank statements.

4. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingworth in a decision dated 28 November 2018 on the basis that it was arguable that the judge had not adopted the correct approach to the switching of the evidential burden, that it was arguable that there had been procedural unfairness and it was arguable that the judge had insufficiently delineated the relevancy of the Appellant's qualifications in arriving at credibility conclusions.

Hearing

5. The appeal came before the Upper Tribunal for hearing on 31 January 2019. The Appellant's solicitors, Prime Law Solicitors, came off the record on 28 January 2018 on the basis that the Appellant had withdrawn his instructions. There was no appearance by or on behalf of the Appellant. Given that it is clear the hearing notice was sent to both the Appellant and his former solicitors and he was thus on notice of the appeal hearing, I decided to proceed with the hearing in his absence.

6. I heard submissions from Mr Bramble on behalf of the Respondent, who sought to rely on the judgment of Mr Justice Martin Spencer in R (on the application of Shahbaz Khan) [2018] UKUT 00384 (IAC). In respect of the first ground of appeal, Mr Bramble submitted that whilst it was perhaps a little confusing it was clear if one looked at the judge's self-direction as to the shifting burden of proof at [13] alongside

[8], [47] and [48] that although it was not the most precise, it does show that the judge was mindful of the correct approach to be taken and there was no error of law.

7. In relation to ground 2 and the focus by the judge on the fact that the Appellant has obtained an MBA, Mr Bramble submitted the point here is that the Appellant is an educated man and what is important in the context of R (on the application of Shahbaz Khan) is that it was reasonable to expect the Appellant to have knowledge of certain facts and he submitted the judge was entitled to take account of the fact that the Appellant was educated.

8. In respect of ground 3 and the assertion that the judge failed to provide proper or sufficient reasons, Mr Bramble sought to rely on [37](iv) of the judgment in Khan, which provides as follows:

> *"However, for an applicant simply to blame his or her accountant for an 'error' in relation to the historical tax return will not be the end of the matter: far from it. Thus, the Secretary of State is entitled to take into account that, even where an accountant has made an error, the accountant will or should have asked the tax payer to confirm that the return was accurate and to have signed the tax return, and furthermore the applicant will have known of his or her earnings and will have expected to pay tax thereon. If, realising this (or wilfully shutting his eyes to the situation), the applicant has not taken steps within a reasonable time to remedy the situation, the Secretary of State may be entitled to conclude either that the error was not simply the fault of the accountant or, alternatively, the applicant's failure to remedy the situation itself justifies a conclusion that he has been has been deceitful or dishonest and therefore he should be refused ILR within paragraph 322(5) of the Immigration Rules."*

9. Mr Bramble submitted that the judge had correctly followed what was required. The Appellant tried to claim he was not aware of the extent of his earnings in 2010 to 2011 but the judge at [21] to [23] gave adequate reasons as to why he found the Appellant's answers in this respect to be evasive. The judge was entitled to take account of the fact that in respect of [29] of his decision the Appellant was unable to state who his biggest client was, despite the fact that one would think the Appellant would know which of his clients are his biggest earners.

10. Mr Bramble submitted that there was no basis to assert that the judge's decision was perverse and circular and the judge found and was entitled to find that the Appellant's answers were deficient for crucial years.

11. In respect of procedural unfairness, at [32] of the judge's decision it was asserted that the judge's concerns about the documentary evidence were not put to the Appellant in order to give him the opportunity to comment. Mr Bramble's point on this is that there was no statement from Counsel for the Appellant at that hearing nor unfortunately was there a minute from Ms Karbani, who represented the Home Office, and thus it was hard to take this issue any further, given there was no particularisation of the points put based on evidence which it is said was not put to the Appellant.

12. In respect of [22] of the grounds relating to [44] of the judge's decision it is for the Appellant to prove his case and not for the judge to trawl though the bank statements. Mr Bramble submitted that overall the judge's decision is in accordance with the approach advocated in R (on the application of Shahbaz Khan). The judge was properly appraised of what was required of him and had gone about it accordingly. He submitted that the determination was very thorough and the grounds of appeal were just a disagreement with those findings and that there was no evidence to substantiate the procedural fairness point.

Findings and reasons

13. I find no error of law in the Judge's approach to the burden of proof, as is asserted in Ground 1 of the grounds of appeal. At [13] the Judge found that the initial burden is on the Respondent and it then passed to the Appellant to offer a plausible explanation. The Judge found that the Respondent had made out his case; that the burden then passed to the Appellant who he found had not provided a credible explanation. The Judge also considered in the alternative that he was satisfied on the evidence that it had been shown that the Appellant made false representations with the necessary dishonest intent, on his Tier 1 applications and reiterated his findings at [51].

14. The second ground of appeal asserts at [17] that the judge failed to give proper reasons and placed considerable weight on the fact that the Appellant has an MBA. I do not find that assertion to be made out. The Judge was entitled to take account of the fact that the Appellant has an MBA however he did so in the context of his educational background as a whole, which includes a post graduate diploma in Business Management and the Appellant's employment history as a business consultant, in respect of which he claimed to have earned the equivalent of £95,000 pa for a 6 month period. The Judge also addressed this again at [45] finding that it was not credible that the Appellant was unable to notice a huge error in his tax affairs for 3 years, despite his educational and employment history. I find it was open to the Judge to make these findings on the evidence before him.

15. The third ground of appeal asserts that the Judge made irrational findings and failed to properly articulate reasons relating to the oral evidence at [21], [22], [23], [24], [29], [30], [32], [39], [42] and [45]. Contrary to the assertions set out in this ground of appeal, I find that the Judge properly addressed the evidence before him and reached rational conclusions in respect of it, in particular: at [21]-[22] that the Appellant was evasive in his responses as to his income, claiming that he was not aware of what his earnings were and that he only checked the 2010/2011 accounts roughly before giving them to his solicitor and that this was not credible and showed the Appellant was trying to evade responsibility and at [29] that he did not notice whether his clients were big or small and he did not know who was his biggest client, which the Judge rejected on the basis that this was not credible. The Appellant then stated that it was Bukhari investments [30] but at [34] the income the Appellant received from them was only £5253 [34]. It was further open to the Judge to reject the accountants' explanation at [39]-[42] given that they prepared the Appellant's accounts for

2010/2011; 2011-2012 and 2012/2013 and errors were made apparently by the same employee in the 2010/2011 and 2012/2013 tax returns but not in the 2011/2012 return.

16. In respect of the fourth ground of appeal, this asserted that the judge's findings at [35] were procedurally unfair because his concerns regarding the documentary evidence had not been put to the Appellant in order to give him the opportunity to comment and likewise, in respect of the accountants' evidence recorded at [44] it was asserted that the judge had erred in failing to look at the evidence set out in the bank statements.

17. In respect of the first assertion, I do not find that this is made out. The Appellant and his legal representatives were well aware of the issue under appeal and that it would be necessary for the Appellant to demonstrate that he did earn the income claimed in order to prove that he did not utilise false representations in order to obtain leave to remain pursuant to Tier 1. I find that it was incumbent upon him and his legal representatives to put forward his case clearly and it was open for the Judge to find at [38] based on his summary of the evidence at [35] that the letters from three clients, none of whom attended, showed income of only a few thousand pounds, way short of the claimed income.

18. In respect of the second assertion, I accept that it was not appropriate for the Judge to state at [44] that: "*it is not for me to trawl through these bank statements and add up the various receipts shown on them*." I find there is some merit in the assertion that it was open to him to ask the Appellant's legal representatives to provide e.g. a schedule of payments. However, ultimately it is for the Appellant to prove his case and there is no explanation as to why no schedule had been prepared in any event. Moreoever, the Judge did give careful consideration to the bank statements from 1 October 2010 to 29 March 2011 and sustainably concluded at [44] that the bank statements do not provide credible corroboration of the Appellant's claims for this time period.

19. For the reasons set out above, I find no material errors of law in the decision of First tier Tribunal Judge Roots.

Decision

The appeal is dismissed.

No anonymity direction is made.

Signed *Rebecca Chapman* Date 20 February 2019

Deputy Upper Tribunal Judge Chapman