



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

Appeal Number: HU/03981/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 10 January 2018**

**Decision & Reasons Promulgated
On 12 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**MUHAMMAD ATTIQUE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms S Cunha of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 7 May 1981. On 23 January 2005 he entered with leave as a student. He made a series of successful applications for further leave as a student and then under the Points-Based System. His last leave was cancelled by a notice of 27 August 2014 against which he appealed. The appeal was dismissed and his appeal rights exhausted on 29 June 2016. More than 28 days later, on 15 August 2016, he lodged an application for indefinite leave to remain.

The Respondent's decision

2. On 26 January 2018, the Respondent refused the indefinite leave application. There were discrepancies between the income which the Appellant had declared to HM Revenue & Customs and to the Respondent in his applications for further leave of 25 October 2010 and 12 January 2013. Enquiry of HMRC in March 2015 had disclosed a lack of any Pay As You Earn records for the years ending 5 April 2010-2013 and no self-assessment returns for the years ending 5 April 2010-2014.
3. The Respondent's refusal was based on the provisions of paragraphs 322(5) and 276B of the Immigration Rules by way of reference to the Appellant's character, conduct employment record.
4. The Respondent was aware that Appellant's leave had been cancelled at port on 27 August 2014 on the grounds of the unsatisfactory nature of the Appellant's employment record which appeared not to be as he had represented to the Respondent and because of concerns about what he had earned and declared to HMRC.
5. The Appellant had appealed that decision and by a decision promulgated on 1 October 2015 Judge of the First-tier Tribunal NMK Lawrence dismissed the appeal on all grounds. His appeal rights became exhausted on 29 June 2016.

The First-tier Tribunal Proceedings

6. On 2 February 2018 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds comprise the expression "Article 8" without any additional wording or explanation. References are made to a record from HMRC, accounts and an accountant's letter, without any particularisation.
7. At the hearing of the appeal in the First-tier Tribunal the Appellant was represented by Counsel and by a decision promulgated on 19 October 2018 Judge of the First-tier Tribunal Davey dismissed the appeal on all grounds.
8. The Appellant in person sought permission to appeal. The grounds of appeal assert the Judge had not taken into account that the Appellant on 12 June 2017 had submitted a self-assessment tax return for the year ending 5 April 2011 which had been accepted by HMRC and the Judge had not taken into account a letter from the Appellant's current accountants, at Appellant's Bundle page E1, confirming this together with a letter of 30 May 2018 from HMRC at page 1 which it was suggested effectively exonerated him. The grounds further and baldly assert that the refusal of further leave would result in unjustifiably harsh consequences for the Appellant. No details of the Appellant's private and family life in the United Kingdom were disclosed to the Judge before whom no submissions on it were made or are referred to in the grounds for appeal.

9. The Judge noted at paragraph 32 of his decision the Appellant had a wife and family in Pakistan.
10. On 7 July 2017 Designated Judge of the First-tier Tribunal Garratt granted permission on the basis that the Judge arguably had erred in failing to take account of evidence about the Appellant's tax return and letters of 16 and 30 May 2018 from HMRC confirming the Appellant had filed a tax return for the year ending 5 April 2011.

The Upper Tribunal Proceedings

11. The Respondent did not file a response pursuant to Procedure Rule 24. The Appellant attended the hearing at which he was unrepresented. I explained the purpose of the hearing and he confirmed his address and also that he had received legal advice when preparing the grounds for appeal.
12. I explained to him the basis upon which he had been granted permission to appeal and that the issue before me was whether there was a material error of law in Judge Davey's decision. The Appellant being unrepresented, I proposed that the Respondent should first make submissions and then he would have the opportunity to comment on them.

Submissions for the Respondent

13. Ms Cunha submitted that the acknowledgments from HMRC of receipt of the Appellant's 2011 tax return were not relevant. The issue was the Appellant's lack of explanation why this and other returns had not been made in time or corrected earlier or made at all. At paragraphs 11-12 Judge Davey had dealt with the failure by the Appellant to file returns and his lack of explanation for such omission. The only evidence that the omission had been rectified was confirmation that the 2011 tax return filed some six years after the end of the tax year in question.
14. She referred to the judgment in *R (Khan) v SSHD (Dishonesty, tax return, para.322(5)) [2018] UKUT 384 (IAC)* and submitted the Judge had made a holistic assessment and given reasons why the Appellant had not discharged the burden on him to show he had not falsely represented his position. Judge Davey had extensively reviewed the correspondence provided by the Appellant and explained at paragraph 18 of his decision why the correspondence added little, if anything. The decision contained no material error of law and the appeal should be dismissed.

Submissions by the Appellant

15. I summarised the submissions made for the Respondent. The Appellant confirmed he had the relevant papers with him.
16. The Appellant asserted that the error or failure to lodge tax returns and had not come to light until 2017 and he had in the intervening period

relied on his previous accountant. He had tried to trace the accountant so that he might obtain a letter from them to confirm his position but could not trace him. He was still waiting for HMRC to process his 2011 return.

17. He had been in PAYE employment between 2009 and 2013. He had sent his bank statements to prove the income he had represented to the Respondent in his applications for further leave. He produced bank statements for some of the period 2009-2010 and HMRC form SA302. I told the Appellant there were no bank statements in the Tribunal file and none had been included in the bundles filed by each of his former representatives and the Respondent for the hearing before Judge Davey. He did not have any other bank statements with him. He had nothing else to put to me.

Error of Law Consideration

18. At the end of the hearing I stated that I found there was no error of law in the decision of the First-tier Tribunal for reasons which would follow in this written decision and which I now give.
19. The Judge took into account that the Appellant had submitted tax returns as mentioned at paragraphs 12 and 13. He noted the lack of explanation for the apparent inconsistencies in the Income of the Appellant declared whether to HMRC or the Respondent and that the HMRC correspondence referred to in the grounds for appeal added nothing: see paragraphs 14-18 of the decision.
20. The Judge took into account that the Appellant was aware of the need to file accurate tax returns from the cancellation of his leave on 27 August 2014 and the dismissal of his appeal against that decision: see paragraphs 24 and 25.
21. Notwithstanding the absence of evidence or indeed submissions to support the Appellant's claim based on his private life in the United Kingdom, the Judge addressed this at paragraphs 32 and 33.
22. I have taken account of the fact that the Appellant is unrepresented and have considered not just the grounds for appeal but the entirety of the First-tier Tribunal decision and find the Judge reached sustainable conclusions for which he gave sufficient and adequate reasons and that his decision contains no material error of law. This appeal is therefore dismissed and the First-tier Tribunal decision shall stand.

Anonymity

23. There was no request for an anonymity direction and I do not find there is any need for one.

SUMMARY OF DECISION

The decision of the First-tier Tribunal did not contain any error of law and shall stand.

The appeal is dismissed.

Anonymity direction not made.

Signed/Official Crest

Date 15. i. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal