



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/04568/2018
HU/04572/2018
HU/04570/2018

THE IMMIGRATION ACTS

Heard at Field House
On 17 January 2019

Decision & Reasons Promulgated
On 04 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

IZZAT [K] (FIRST APPELLANT)
FAHEEMA (SECOND APPELLANT)
[M K] (THIRD APPELLANT)
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Gajjar, Prime Law Solicitors
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The first Appellant is a national of Pakistan born on 6 December 1975. The second Appellant, Mrs Faheema, is his wife, and the third Appellant is his daughter, born on 20 January 2010.

2. The Appellant arrived in the United Kingdom on 29 September 2006 with leave to remain as a student for two years. He subsequently applied in time for further leave, firstly under the International Graduate Scheme, to 1 February 2009; then as a Tier 1 Post Study Migrant until 1 February 2010 and subsequently as a Tier 4 student, to 27 October 2010. On 22 October 2010, the first Appellant applied for leave as a Tier 1 General Migrant, which application was refused on 10 November 2010. The first Appellant successfully appealed this decision and was granted further leave to 7 November 2013 and Tier 1 leave was subsequently extended to 7 November 2016.
3. On 28 October 2016, the first Appellant applied for indefinite leave to remain on the basis of 10 years continuous residence. This application was refused on 25 January 2018 with reference to paragraph 322(5) of the Immigration Rules, on the basis that the Respondent considered that his character and conduct made it undesirable that he be allowed to remain in light of the fact that the level of income claimed in his previous visa applications was higher than that declared in his income tax returns, which suggested a misrepresentation either to the Secretary of State or to HMRC. The Appellant's dependants having joined him on 20 January 2012, all three Appellants appealed against this decision.
4. Their appeals came before Judge of the First-tier Tribunal Farrelly for hearing on 25 September 2018. In a decision and reasons promulgated on 29 October 2018, the judge dismissed the appeal, finding at [24] that the first Appellant had not established that he had made an innocent mistake for which his accountants were responsible and found that it was thus undesirable he be permitted to remain in the UK. In respect of Article 8, the judge found that it would not be in his daughter's best interests for her to remain in the UK and that she was of an age where she could adjust to life in Pakistan where she could be provided for and where there were cultural connections and extended family members.
5. Permission to appeal was sought in time on a number of grounds. Firstly, that the judge made a material error of fact or an irrational finding in making reference to friends who have been able to advise him. It was contended the Appellant denied ever saying that he had sought advice from friends and this was not contained in his witness statement. It was asserted also with reference to paragraph 23(IV) that the fact that the Appellant is well educated does not mean he would have necessarily spotted an error in his tax affairs given that he was not sufficiently versed in tax affairs in order to do that.
6. Secondly, that the judge erred in applying the incorrect standard of proof. Following the case of R (ota Khan) JR/3097/2017 decision makers are required to consider whether an individual has been honest or merely careless; see also Shen [2014] UKUT 236. It was argued that the Appellant's explanation has to be considered against the minimum level of plausibility and that the judge's findings at [23](V) as to the Appellant's education and [23](VII) that the judge expected the Appellant would have scrutinised the calculations and at [23](X) demonstrated that he was applying too high a standard of proof.

7. Ground 3 asserted that the judge made further material errors of fact. At [2] in relation to the amount of self-employed earnings claimed, the judge asserted this was £11,138, whilst the correct figure was £21,229; at [4] in recording that the Appellant did not disclose any self-employment in his un-amended tax return when this is factually incorrect, in that the Appellant's case was that he had declared his self-employed income but his accountant without his approval declared net business losses which triggered a rebate of £2,382; at [6] that the Appellant did not disclose self-employment in relation to the 2013/2014 tax return, which failed to take account of the Appellant's evidence that the accountant under-declared his actual turnover of £12,460 to £2,150 and inflated his expenses from £5,550 to £10,395, in order to generate a second rebate claimed to the accountant's personal account. At [23](XI) it was contended that the judge erred in finding the Appellant had prepared his own accounts for 2015 to 2016, which is incorrect given that the evidence before the Tribunal was that the preparation, calculation and advice had been carried out by Qazi & Sons and submitted by the Appellant, and fifthly at [23](X) in failing to take account of the Appellant's explanation for the timing of his amended returns.
8. Ground 4 asserted that the judge had further erred in failing to have regard to material evidence:
 - (1) in failing to take account of a letter from Qazi & Co Accountants at AB53 to 55 stating that they had scrutinised his tax returns filed by his previous accountants, Tax Assist, and advised him that he had been given a rebate or a refund not because of tax relief but because of under-declaration;
 - (2) at [21] when concluding the Appellant may be a burden on the tax payer, the judge failed to have regard to the fact that the Appellant had paid the correct tax on the other tax years and has had no recourse to public funds and that the total tax paid by him over six years amounted to £73,222.04;
9. Permission to appeal was granted by Deputy Upper Tribunal Judge Parkes in a decision dated 7 December 2018. After the grant of permission but prior to the hearing by the Upper Tribunal, the Appellant's solicitors submitted further documentation pursuant to Rule 15(2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 on 18 December 2018, copied to the Home Office Presenting Officers' Unit. This was an application to adduce further evidence, the further evidence being a report from the Institute of Financial Accountants who investigated the Appellant's complaints against his former accountant and sat on 31 October 2018 and 23 November 2018. The committee, having sought views from both the Appellant and from his former accountant Mr Iqbal, concluded that the eight allegations made by the Appellant against his former accountant disclosed a *prima facie* case against him and supported an allegation of dishonesty. At 3.3 the Investigation Committee stated as follows:

"There was prima facie evidence of repeated errors in the return of tax returns for the years 2013 and 2014. There was prima facie evidence of allegations with regard to incorrect advice with regard to alleged tax rebates and an alleged incorrect profit share agreement for the benefit of Mr Iqbal. The Investigation Committee have particular

concerns as to allegation (viii) linked with the allegation that the monies were not paid into a designated client bank account”.

As a consequence of the committee’s decision the matter was referred to the Disciplinary Committee of the Institute of Financial Accountants and the Appellant was informed of this on 5 December 2018.

Hearing

10. At the hearing before the Upper Tribunal, Mr Gajjar on behalf of the Appellant stated that they had not yet been given a date for the Disciplinary Committee but the Appellant had been told it would be in the new year.
11. Ms Pal having read the report of the Investigation Committee pragmatically accepted that this provided corroborative support for the basis of the Appellant’s claim that it was his accountant rather than he who was dishonest and had made errors in his tax returns. On that basis she accepted that although this report was not before the First-tier Tribunal Judge given its substantiation of the Appellant’s claim this did render the decision of First-tier Tribunal Judge Farrelly unsafe.

Findings

12. In light of Ms Pal’s helpful concession, I find that the evidence from the Institute of Financial Accountants does cast doubt on the safety of the decision of Judge Farrelly, albeit it was not before him at the date of hearing or promulgation of the decision. Clearly the Appellant’s case stands or falls on the credibility of his claim not to have known that his accountant was acting dishonestly in preparation of two of his tax returns.

Decision

13. The appeal is allowed to the extent that it is remitted for a hearing *de novo* before the First-tier Tribunal at Taylor House, to be heard by a judge other than First-tier Tribunal Judge Farrelly.

Directions

- (1) The appeal is to be listed for two and a half hours.
- (2) If Listing could liaise with the clerks to Mr Turner and Mr Gajjar of Imperium Chambers on [~] that would be very helpful.

No anonymity order is made.

Signed *Rebecca Chapman*

Date 30 January 2019

Deputy Upper Tribunal Judge Chapman