Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/05652/2018**
HU/07940/2018

THE IMMIGRATION ACTS

Heard at Field House **Decision and Reasons Promulgated**
On 27 March 2019 **On 30 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MRS SADAR MEHTAB HASSAN
MRS WAQAR UN NISA
(anonymity directions not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr J Gajjar of Counsel
For the respondent: Mrs Willocks-Briscoe, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan born on 1 October 96 and 22 September 1982 respectively. They are husband and wife and they have two children born on 2 July 2015 19 August 2017. They appealed against the decisions of the respondent refusing them leave to remain under paragraph 322 (5) of the immigration rules and Article 8 of the European Convention on Human Rights. As the second appellant's appeal rests or falls with that of the first appellant, I

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shall consider the appeal of the first appellant's appeal and refer to him as "the appellant".

2. Permission to appeal was generously granted First-tier Tribunal Judge Ford in a decision dated 6 October 2018 stating that it is arguable that the Judge when he found that the appellant had engaged in a deliberate attempt to defraud, that the appellant's behaviour did not reach the high threshold under the relevant paragraph of the immigration rules. The Judge also found that it was arguable that the Tribunal Failed to adequately consider the appellant child's best interest and the difficulties he will face as an autistic child in Pakistan. The Judge gave permission to appeal on grounds 3 and 4 and said that there has been an arguable material error of law.

3. The permission Judge said that section 322 (5) has a "high threshold". In that regard I take into account the case of **R (N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006] QB 468)** Richards LJ stated at paragraph 62 that "Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities." In the circumstances the Judge applied standard of proof.

4. First-tier Tribunal Judge in a careful and detailed decision dismissed the appellant's appeal and found that the appellant has not given a truthful account of his financial affairs due to the large financial discrepancies found in his evidence and his explanations were thoroughly unconvincing. The Judge made a clear finding that the appellant was involved in a deliberate attempt to deceive agencies of the HM Government. The Judge was entitled to find on the evidence that the respondent had satisfied his burden of proof and now it was upon the appellant to explain the discrepancies in his evidence. The Judge was satisfied that his was a deliberate deception.

5. The First-tier Tribunal Judge followed the reasoning of the upper Tribunal in the case of **R (on the application of Khan) of the Secretary of State for the Home Department (dishonesty, tax return, paragraph 322 (5) [2018] UKUT 00384 (IAC)** when assessing whether the appellant was dishonest in relation to his dealings UKVI or HMRC even if he did not specifically refer to that case.

6. The Judge did consider this appeal within the guidance given in **Khan** which was whether the appellant's explanation for the error of not declaring his earnings was plausible, whether any documents which can be assumed to exist such as correspondence between him and his accountant at the time of the tax return has been disclosed. He also had to assess whether there is a plausible explanation for why such documentation is missing. The Judge also assessed why the appellant did not realise the error sooner because his liability to pay

tax was less than he should have expected and whether at any stage have been taken steps to remedy the situation and, if so, when the steps were taken and the explanation for any significant delay. The Judge followed the guidance even though he did not refer to the case.

7. The initial burden of proof is on the respondent which he satisfied by producing the appellant's tax returns and there was a discrepancy as to how much tax he declared to the HMRC and UKVI. The appellant accepted that there had been "mistakes made" in his tax returns but attributed them to his accountant or accountants. In the case of **Khan** it is stated that where there is a significant difference between the income declared in the appellant's previous application for leave to remain and the income declared to HMRC, the Secretary of State is entitled to draw an inference that the applicant has been deceitful or dishonest.

8. The Judge clearly found that the respondent had discharged his burden of proof by providing this evidence and was entitled to look upon the appellant for a plausible explanation showing that he has not been dishonest or deceitful to a balance of probability. Therefore, it was for the Judge to analyse the evidence and find whether there was an innocent explanation for the discrepancy.

9. The appellant's explanation which was considered by the Judge essentially was that his various accountants including Mr Ahmed FSF accountants had made a mistake and he had accepted responsibility for providing inaccurate figures to HMRC.

10. The Judge did not accept the appellant's explanation and gave copious and valid reasons for why he did not except the appellant's explanations and evidence. The Judge considered the appellant's evidence within the background of the appellant's and his wife's education. He noted that the appellant has a qualification in business management and his wife has an MBA and MS in management sciences. The Judge did not accept the appellant's explanation that his field of business management does not cover accounts or taxation. The Judge was entitled to find that anyone with this experience and qualifications and who is running a business consultancy would have been aware of at least general concepts of taxation. The Judge did not accept that the appellant's evidence that he had left all his tax matters to Mr Ahmed which is why no tax had been paid on his self-employed income, despite having accounts showing the profits. The Judge find it difficult to believe that a man who purports two run a business consultancy firm did not check his tax returns after they had been prepared by his accountant and did not question why he was not expected to pay extra tax for three years in his role as a business consultant. These perfectly legitimate questions were asked of the appellant and he was not able to answer them satisfactorily. The Judge found that the appellant was vague and evasive and not a credible witness.

11. The Judge found that the appellant's undeclared income from his consultancy business for three years totalled £55,191.50 which was not a small amount of money and the appellant could not possibly have not noticed for three years that he was underpaying tax. The Judge further noted that the appellant's salary was being taxed at source and therefore the only income he had to declare was his income from his consultancy. It must have been obvious to the appellant that he had not declared or paid tax on his consultancy business totalling £55,191.50.

12. The Judge took into account that the appellant had no criminal convictions and a good immigration record said that in itself does not mean that people do not on occasions act stupidly believing that they will not be caught this conclusion has now material error.

13. The Judge considered the letters from FSF accountants dated 20 June 2016, which stated "signed on behalf for on behalf of FSF accounts" which states that the mistake was due to a clerical error while another letter dated 8 June 2016 from them stated that the mistakes made were due to the errors of a trainee who has left their organisation. The Judge did not find it credible that the errors continued for three years and his adverse credibility finding was open for him to make.

14. The Judge considered respondent's further evidence produced at the hearing that FSF accountants as an entity was not even in existence at the time, as SFS was incorporated on 24 June 2013. Furthermore, the Judge noted that the SFS's trading accounts show they had assets amounting to £2 in cash in the bank as of 2014 and again in 2015. This demonstrated to the Judge that the stakes made could not have been made by SFS accountants as claimed by the appellant. The Judge also relied on a screen shot in a website which showed that the address which had been given for FSF accountants was in fact a guesthouse.

15. The appellant's evidence was that Mr Ahmed who worked as a consultant for a firm of accountants called Proacc but subsequently went to work SFS. They still did not explain how SFS was working on the appellant's accounts when they had not even been incorporated. He noted that Mr Ahmed did not give evidence because the appellant claimed that he has disappeared.

16. The appellant's evidence was that SFS had an office in Dickenson Road. However, SFS offices was registered at 1036 Stockport Rd furthermore the FSF registers office was at the same address as Proacc. The Judge was entitled to find that this was not credible evidence because the appellant could not explain why their registered office was also at 1036 Stockport Rd and not Dickenson Road as claimed by the appellant. This evidence also went to the credibility of the appellant which the Judge correctly took into account when assessing the appellant's credibility.

17. The Judge also noted that the appellant said that FSF were registered as his agents with HMRC but the letter from the HMRC shows that they had been registered as his agents on 8 June 2016, after the first refusal decision on 4 June 2016 and well after the "inaccurate" tax returns had been filed. The Judge was entitled to find that this also goes to the credibility of the appellant's claim that he had not used deception.

18. The Judge did not accept the appellant's explanation that he employed different sets of accountants who all appear to have made mistakes. The Judge found it particularly strange that the same trainee or a different trainee would make the same mistake for three years running, particularly as the mistake favoured the appellant on each occasion, which seems, he stated, to be more than unfortunate coincidence. The Judge was entitled to find that this also goes to the credibility of the appellant's claim that he has not used deception.

19. Furthermore, although the appellant had said that the tax return mistakes had been made when he instructed Proacc accountants, but the Judge correctly noted that this clearly begs the question as to why two letters had been received on FSF letterhead paper who took responsibility for the mistake in his account. The Judge also do not accept the appellant's explanation that Mr Mr Ahmed had been a director with Proacc before moving to FSF and he moved with him after a short hiatus. The Judge ddid not accept this explanation because Mr Ahmed in his letter had not any reference to Proacc at all and the letter was on SFS letterhead stated that this organisation takes the blame.

20. The Judge stated that although the appellant had requested an adjournment to enable further evidence to be provided, no one from Proacc gave evidence or submitted a written statement. The Judge was entitled to question that if Proacc was responsible for the mistake as the appellant claims why no evidence was provided from Mr Bassit of Proacc. The Judge did not accept the appellant's explanation for why no one came to give evidence was that Mr Bassit told him that he will answer further questions if the Home Office wanted to contact him. The Judge was right to ask that this still does not explain why the appellant did not ask anyone from that firm to give for the purported mistakes that they had made especially after adjournment had been given specifically for this purpose.

21. The Judge was entitled to find that if the accountants had made mistakes which has prejudiced the appellant it is not credible that he had not made any complaints on any of his accountants to the appropriate regulatory bodies despite the mistakes that they accepted they had made. The Judge was entitled to find that this is not credible.

22. There were other credibility issues that the Judge took into account such as why the appellant engaged a number of accountants and noted that the appellant's self-employment business accounts submitted to the respondent in his 2011 application was prepared by Ashton Cooper accountants who appear to set out the information needed by the respondent correctly and yet this firm

did not submit a tax return. The Judge did not accept the appellant's explanation and gave good reasons in his decision.

23. The appellant submits that the HMRC has been satisfied with the explanation he has provided them. The judge was entitled to find that the view of the HMRC is neither here or there as set out in the decision of the Upper Tribunal the judicial review case of **R (on the application of Samat) v Secretary of State for the Home Department [2017] UKAIT JR** and **Abbasi JR/13807/2016** where there were findings relating to the relevance of the actions that HMRC makes against a person. It states that there are several reasons why HMRC would not take action against a particular person and that should not go in favour of the appellant. Therefore, the treatment of applicants by HMRC is not relevant to 322 (5) assessments.

24. The Judge was aware that the finding of deceit and dishonest in relation to a person's tax affairs is a serious finding with serious consequences. The Judge considered all the evidence extremely carefully and on the evidence in this appeal his was the only conclusion that could possibly have been reached. To have found otherwise would have been a material error of law.

25. The Judge made clear findings to the relevant burden of proof and the evidence which he relied upon for his findings were made world unequivocal and his reasoning is beyond reproach. There is no error of law in the decision, material or otherwise.

26. In respect of Article 8 the Judge considered all the evidence including the welfare of the appellant's children. The Judge was bound to take into account in his balancing exercise the provisions of section 117 of the Nationality, Immigration and Asylum Act 2002 and was satisfied that the appellant and his children enjoy a family life together and that it is proportionate for them to return to Pakistan as a family unit.

27. The Judge made reference to s55 of the Boarders, Citizenship and Immigration Act 2009 and had regard to the welfare of the appellant's children as a primary, albeit not a paramount consideration which was the appropriate guidance that he gave himself. The Judge noted that the appellant and his wife's private life was built in this country when their immigration status was precarious.

28. The Judge considered the evidence that the appellant has been in the United Kingdom for 12 years and his wife for four years. The Judge made the relevant analysis and enquiry in respect of the children and whether they will be looked after in Pakistan by their parents on their return. He found that both appellants speak English to a good standard and there is no evidence that they will not be able to earn an income in Pakistan and look after their family. The judge also found that the children have family in Pakistan as the appellants parents live there whom they have visited them on a regular basis. The Judge found that the children will be looked after by their parents in Pakistan which was a

conclusion open to him on the evidence. The Judge also noted that they are Pakistan nationals who can return to their own country.

29. In respect one of the children the Judge took into account the report of an educational psychologist of November 2017 where reference was made that the child is on the autistic's spectrum presenting with complex social needs. The Judge stated in his decision that the second appellant's family have speech difficulties and also live in Pakistan and therefore would be able to support the appellants in supporting their child with autism. He also considered that the other child has Syndactyly on his toes. The Judge was fully aware of the medical conditions of children.

30. However, the Judge considered the objective evidence of the treatment of people with disabilities in Pakistan and stated that there is no evidence before him that there are no healthcare facilities for those with disabilities. This was in fact not an issue and it was accepted that treatment for this condition is available in Pakistan. The Judge found that appellant's autistic child has his parents who are concerned and committed and who are aware of these possible issues that may arise and have the education to be able to access appropriate help and support for this child. These conclusions were open to the Judge on the evidence there is no material error of law.

31. The Judge was entitled to find that the respondent's goal of maintenance of effective immigration control is clearly in the public interest in this case.

32. The grounds of appeal are no more than a quarrel with the findings of the First-tier Tribunal Judge who by all accounts has considered all the evidence carefully and did not fall into material error. I therefore uphold the decision of the First-tier Tribunal.

Decision

33. The appellant's appeal is dismissed.

Signed by

Dated this 10th day of April 2019

A Deputy Judge of the Upper Tribunal
Ms S Chana