



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

Appeal Number: HU/10170/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 17 June 2019**

**Decision & Reasons Promulgated
On 03 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR WAJID ZAMAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr P Richardson, Counsel, instructed by Pioneer Solicitors

DECISION AND REASONS

1. The appellant in this case is the Secretary of State and the respondent is Mr Wajid Zaman. However, for the purposes of this decision and reasons I shall refer to the parties as they were before the First-tier Tribunal where Mr Zaman was the appellant. Mr Zaman is a national of Pakistan born on 1 April 1979 who appealed to the First-tier Tribunal against the decision of the respondent to refuse his application for indefinite leave to remain, that decision being refused by the Secretary of State on 29 March 2018. In a decision and reasons promulgated on 19 March 2019 Judge of the First-tier Tribunal Dineen allowed Mr Zaman's appeal.

2. The Secretary of State appeals with permission on the ground that, in short, the judge erred by placing reliance that he did on the views of HMRC and in allowing the appeal.

Error of Law Discussion

3. It was Ms Everett's submission that the judge's reasons were inadequate. Although she accepted before me that the judge's reasonings were not exclusively related to the actions of HMRC, she submitted that the judge placed significant weight on the lack of action taken by HMRC in assessing the seriousness of the allegations against the appellant. Although she accepted that he was not wrong to place weight on the actions of HMRC, she submitted that it was clear that a lack of action by the HMRC did not mean that an applicant had not acted in a fraudulent way. She stated that she could not put her point any more strongly.
4. Mr Richardson for Mr Zaman accepted that the judicial review in **R (on the application of Khan) v Secretary of State for the Home Department (dishonesty, tax return, paragraph 322(5)) [2018] UKUT 00384 (IAC)** and the Court of Appeal in **Balajigari [2019] EWCA Civ 673** confirmed that the Secretary of State can reasonably conclude that someone has acted dishonestly but that it was wrong for them to be deprived of any remedy. In this case he submitted the appellant had used that remedy and was believed by the Judge of the First-tier Tribunal.
5. Mr Richardson further submitted that the HMRC issue was not the only issue considered by the judge who had correctly directed himself and had set out including at [35] and [36] that he must take into consideration all the circumstances as a whole and found there was no material misconduct. He submitted that it was clear that this conclusion did not solely consist of the consideration that the HMRC had found the appellant not to be fraudulent. Equally, although the actions of the HMRC were not determinative, it was Mr Richardson's submission that the judge did not have to ignore the fact that HMRC had not taken such an action had not found the appellant to be fraudulent. The judge noted that the appellant had approached the HMRC voluntarily at [17] and had in mind the respondent's case including that that it was argued that the appellant's amendments were made solely to facilitate the appellant's immigration status. It was Mr Richardson's submission that the judge had rejected that argument. The judge had taken into consideration all of the evidence including that the appellant had instructed a new accountant and that the appellant had provided evidence in his bundle of attempts to contact the previous accountants for an explanation which had elicited no response and indicated that neither firm was still practicing.

Conclusions

6. Ms Everett confirmed that this was not a rationality challenge; rather it was submitted that the judge's reasoning was inadequate as the judge at paragraphs [27], [28],[29], [30] and [31] had taken into consideration the

actions of the HMRC and in those circumstances went on to find that the 'high test under paragraph 322(5)' was not satisfied.

7. However the judge found, at [33], that there was evidence in the appellant's bundle of an interview of the appellant and that the transcript did not suggest that there was any point in the interview where the appellant appeared to lack credibility and no points as to credibility were set out in the space provided. No challenge has been made to those findings.
8. The judge went on to find, at [34], that the appellant had income in the two periods relevant to the 2011 and 2013 applications which were well above what was required under the Immigration Rules and therefore even if there had been a desire to deceive the respondent, which the judge did not find to be the case, no material deception had occurred.
9. The judge made findings, at [35], that considering all the circumstances he was not satisfied that there was any intention to deceive. Although the judge did not specifically set out the steps given in the guidance in **Khan**, in effect that was the approach he followed. I have reminded myself what was said in **MD (Turkey) v SSHD [2017] EWCA Civ 1958** that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.
10. Considered fairly and holistically there is no material error in the judge's decisions which indicate that he found the appellant to be credible in the innocent explanation that he provided, including that he corrected the amounts given once he realised that the previous submissions had been incorrect. The actions of HMRC were one factor in the judge's consideration. The judge also went on to make an alternative finding that even if there had been a desire to deceive no material deception could have occurred given the level of actual income during the two relevant periods in 2011 and 2013, underlining the judge's reasoning that he believed this appellant. Although the decision might have benefited from a different structure, the reasons given were adequate.
11. The decision of the First-tier Tribunal does not contain an error of law and shall stand.

No anonymity direction was sought or is made.

Signed

Date: 28 June 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

I maintain the fee award decision made in the First-tier Tribunal, to make no award.

Signed

Date: 28 June 2019

Deputy Upper Tribunal Judge Hutchinson