Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03435/2019
HU/06479/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Oral decision given following hearing	
On 22 November 2019	**On 6 February 2020**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR SAMEER SHAHZAD (FIRST APPELLANT)
MRS ABEER (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr M Sowerby, Counsel instructed by Pasha Law Chambers Solicitors
For the Respondent:	Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is a national of Pakistan who was born on 19 October 1980. The second appellant is his wife who is also a national of Pakistan. The couple have a child. The second appellant's appeal is dependent on the first appellant's; she has no independent claim.

2. The appellants appeal against a decision of First-tier Tribunal Judge T Lawrence, who in a decision signed on 27 June 2019 and promulgated shortly thereafter following a hearing at Taylor House on 10 June 2019 dismissed the appellants' appeal against the respondent's decision dated 5 February 2019 in which the respondent had refused to grant them leave to remain. The basis of refusal, it being accepted that the appellants would otherwise have been entitled to leave to remain under the Rules, was on suitability grounds, because (as set out at paragraph 32 of the decision of the First-tier Tribunal):

> "The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim; or did so in order to obtain from the Secretary of State or a third party a document required to support such an application or claim (whether or not the application or claim was successful)".

3. The short facts in this case are that there was a huge discrepancy between the returns made by the first appellant to HM Revenue & Customs in 2010/11 and also in 2012/13 and the income that he had claimed in respect of these periods when seeking further leave to remain. When seeking further leave to remain he had declared to UKVI a self-employed net profit of £29,850 for the period from 15 September 2009 to 14 September 2010 and in his next application for further leave a profit of £26,808 for the period 1 April 2012 to 31 March 2013. By contrast, when making his revenue returns, for the year 2010/11 he had declared a net profit of only £1,300 and for the tax year 2012/13 on his self-assessment return to HMRC he had declared a net profit of nothing. Of course, on each of his tax returns he had signed a declaration to the effect that these returns were truthful and correct.

4. There was a discrepancy in the explanations given for these inconsistencies, but the most recent explanation which he had given to Judge Lawrence has been set out by Judge Lawrence at paragraph 15 within his decision. At paragraph 12 of his decision, Judge Lawrence sets out the different accounts given as follows:

> "12. … the questionnaire dated 12 June 2018 had given the appellant the opportunity to explain the correction or resubmission of his declarations of earnings for the tax years 2010/11 and 2012/13, which he had stated were that he had not understood the business inputs and outgoings. He now gave the explanation that he had needed to delay the payment of tax in order to pay for his father's medical treatment in Pakistan, which was inconsistent to that earlier explanation and was unsupported by evidence".

5. The judge then went on to refer to the decision of the Court of Appeal in *Balajigari & Ors v SSHD* [2019] EWCA Civ 673 and noted that as a result of the appellant having offered no adequate explanation for the discrepancy between the earnings declared to HMRC and to the Home Office the respondent had concluded that these discrepancies were as a result of dishonesty.

6. As is very common in similar cases where discrepancies have arisen, the first appellant has subsequently paid the tax which he should have paid earlier but as was

made very clear by the Court of Appeal in *Balajigari*, that does not and would not excuse dishonesty when the original returns were made. What the court in that case (which arose out of judicial review hearings in which in general an applicant has not been given an opportunity to have his evidence tested) is that where Article 8 decisions turn on the honesty or otherwise of an applicant, that applicant should be given an opportunity to have his explanation (and in particular whether or not what he did was dishonest) tested in a court environment. That is of course precisely what happened in this case.

7. In his very careful and thorough decision, Judge Lawrence considered the explanation given by this appellant very carefully indeed. It is only necessary to refer to a part of these findings. In the first place the judge concluded that he could not even accept the explanation given for why the false returns were made, because it was inconsistent with the explanation he had earlier given (see at paragraph 22 of his decision). Further, as also noted at paragraph 22:

> "There is also the absence of evidence that the appellant's amended declarations of earnings are genuine, or that he paid money towards his father's medical treatment; he has made assertions of the same in his witness statement and oral evidence, and there is no suggestion that HMRC considers the appellant to have falsely inflated his earnings in the amended declarations, but there is no evidence from other sources of the father's treatment, of money transfers from the appellant to fund the treatment, nor of the appellant's earnings during the relevant periods".

8. This was a finding open to the judge on the evidence.

9. Moreover, in any event, the suggestion that seems to be contained within the grounds (although not further argued on the first appellant's behalf by his Counsel, who did not settle these grounds) that somehow no deception was involved in making what on any view it is now accepted were false returns and that the appellant had not been exercising deception is simply unarguable. What the first appellant says now is that at a time when he was earning respectively £29,850 (September 2009 to September 2010) and £26,880 (1 April 2012 to 31 March 2013) he was not attempting to deceive anyone or acting dishonestly by making declarations to the HMRC of income of respectively £1,300 and nothing, thereby in his words delaying (rather than avoiding forever) his liability to pay significant sums of tax in respect of these periods at the times when that tax was due. Furthermore, he signed a declaration that the figures that he gave were truthful, knowing this not to be the case. It is not possible to argue that this was anything other than dishonest; while somebody who steals a loaf of bread in order to feed his family is on any common sense view less culpable than somebody who goes shoplifting in general for his own gratification, it cannot be said that signing declarations of income known to be false can be anything other than dishonest. When one adds to this the finding by the judge that the first appellant has not even established to the appropriate level of proof that his explanation for his dishonesty was as he now claims (that it was in order to fund his father's medical treatment in Pakistan) there is no basis upon which his appeal could possibly have succeeded. As the Court of Appeal made very clear

in *Balajigari* it will normally be appropriate where dishonest revenue returns have been established to refuse an application for further leave on character grounds.

10. It follows that this appeal is one which is devoid of merit. There is no error of law in Judge Lawrence's very careful decision and this appeal must accordingly be dismissed.

11. I have given this decision orally immediately following the hearing and just before concluding I was informed by Mr Sowerby, representing both appellants that a separate appeal, that of the second appellant, had been linked. This was because for reasons that are not entirely clear but which were dealt with by Upper Tribunal Judge Blundell when giving permission to appeal, the second appellant's appeal had not been linked with that of her husband but had been decided separately by First-tier Tribunal Judge Geraint Jones QC. For reasons that are not entirely clear that judge considered that even if the first appellant's case succeeded, there would be no insurmountable obstacles preventing the second appellant from returning to Pakistan, and indeed her husband could return there with her together with their child. Judge Blundell when giving permission considered that it was at least arguable that that decision contained material errors of law (with which I agree) but because I have decided above that the first appellant's appeal cannot succeed in any event, it is not necessary for me to consider this independent point. The second appellant's appeal could only succeed on the basis that her husband was entitled to remain, and as he is not, neither is she. Accordingly, my decision is as follows:

Notice of Decision

12. **The first appellant's appeal against the decision of the First-tier Tribunal, dismissing his appeal against the respondent's decision, is dismissed.**

13. **No anonymity direction is made.**

Signed:

Upper Tribunal Judge Craig Dated: 14 January 2020