



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos:
UI-2022-005121, UI-2022-
005117
UI-2022-005118, UI-2022-
005119
First-tier Tribunal Nos:
HU/52560/2021,
HU/52557/2021
HU/52558/2021,
HU/52559/2021
IA/08663/2021 & Others

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 May 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MUHAMMAD AHMAD (FIRST APPELLANT)
ASIM ARIF (SECOND APPELLANT)
MAHAK FAYYAZ (THIRD APPELLANT)
MISHKAAT ASIM (FOURTH APPELLANT)
(NO ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Z Malik, KC, instructed by Irvine Thanvi Natas Solicitors

For the Respondent: Ms A Everett, Senior Presenting Officer

Heard at Field House on 5 May 2023

DECISION AND REASONS

1. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Hollings-Tennant (“the judge”), promulgated on 11 August 2022 following a hearing which took place on 2 August 2022. By that decision, the judge dismissed the Appellants’ appeals against the Respondent’s refusal of their human rights claims. A central feature of the judge’s decision was his conclusion that the First Appellant had been dishonest in respect of the question of what is commonly referred to as earnings discrepancies with reference also to a previous First-tier Tribunal decision promulgated on 21 March 2019 (with proceedings being finally concluded on 25 June of that year). The 2019 decision had concluded that the First Appellant had been dishonest.
2. In challenging the judge’s decision, Mr Malik, KC, who appeared below, relied on the fact that notwithstanding the previous First-tier Tribunal’s finding to the effect that the first Appellant had been dishonest, when refusing the human rights claim with which the judge was concerned there had been an express concession that suitability was not being relied on and that this concession had found its way through into the Respondent’s review prior to the hearing before the judge. Indeed, at the outset of the hearing before the judge, the Presenting Officer had confirmed this position. On the day of the hearing there had been a short adjournment and when the case was called back on at 2 o’clock in the afternoon, the Presenting Officer stated that the Respondent did contend that the First Appellant had previously been dishonest and that suitability was a live issue.
3. The judge proceeded to address the issue of suitability and went on to make adverse findings with reference to the previous decision and other matters, one of which was the failure of an accountant to attend the hearing in person.
4. Mr Malik submitted that the judge had been wrong to go behind the clear concession.

5. Other grounds of appeal were put forward, but I need not address these in any detail given the position taken by Ms Everett at hearing before me.
6. Ms Everett, with her customary levels of preparation and fair reflection on the merits of a case in which she appears, took the considered view that having regard to the circumstances as a whole she would concede that the judge did indeed err as contended for in the Appellant's first ground of appeal.
7. In essence, this was on the basis that given the express concession set out in the decision letter under appeal and then maintained at various stages thereafter, it was incumbent on the Respondent to have actually made an identifiable application to withdraw the concession and for the judge to have dealt with that as a discrete matter. The fact that the Presenting Officer had attempted to change the Respondent's position on the day of the hearing was procedurally insufficient and the judge had not dealt with it in a proper manner. On this basis, Ms Everett accepted that the judge's decision should be set aside and suggested that the matter should be remitted for a complete rehearing. Mr Malik was content with that outcome.
8. I am satisfied that Ms Everett's concession was properly made. I am satisfied the judge did indeed err as contended for in the first ground of appeal and with reference to the detailed arguments put forward by Mr Malik therein. I am satisfied that the decision letter did indeed include an express concession to the effect that suitability was not in issue. That concession gave the clear impression to the First Appellant and his representatives that the previous finding on dishonesty was no longer being relied on and they were justified in approaching the appeal before the judge on that basis. Procedural rigour (as that term encompasses a number of principles set out in the relevant authorities cited in the grounds of appeal) requires the Respondent to take certain steps if seeking to withdraw an express concession, such as was present in this case. In turn, it is incumbent on a judge faced with such a scenario to

consider any application and reach a discrete finding thereon, accompanied by reasons. In the present case, neither step was taken in an appropriate manner. In those circumstances, the judge's consideration of the First Appellant's honesty was unsustainable because of what could either be described as procedural unfairness or an error of approach.

9. It is inevitable that given this error, the judge's decision cannot stand and it must be set aside.

10. In the circumstances, it is also inevitable that this case must be remitted to the First-tier Tribunal for a complete re-hearing, having regard to the guidance recently set out by the Court of Appeal in AEB v SSHD [2022] EWCA Civ 1512. The remitted hearing shall not be subject to any preserved findings of fact and shall not be conducted by First-tier Tribunal Judge Hollings-Tennant.

Anonymity

1. There is no basis for making an anonymity direction in this case.

Notice of decision

The decision of the First-tier Tribunal involved the making of an error of law and that decision is set aside.

These appeals are remitted to the First-tier Tribunal (Manchester hearing centre) for a complete re-hearing, with no preserved findings of fact.

The remitted hearing shall not be conducted by First-tier Tribunal Judge Hollings-Tennant.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 15 May 2023

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