



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-005981**  
**First-tier Tribunal No:**  
**HU/58142/2021**  
IA/17852/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 April**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**RAVENDRAN RAGULAN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Gajjar, of Counsel, instructed by Imperium Chambers  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 4 April 2023**

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Sri Lanka born on 20<sup>th</sup> October 1985. He arrived in the UK on 4<sup>th</sup> September 2008 as a Tier 4 student migrant. He has been present in the UK ever since. He firstly had leave to remain as a student, then on the basis of post-study work and then as a Tier 1 general migrant. He made an application to remain indefinitely under paragraph 276B of the Immigration Rules but was refused under paragraph 322 (5) of the Immigration Rules by the respondent in a decision dated 13<sup>th</sup> December 2021 because she was of the view that the appellant's character and conduct were such that a grant of leave was not in the public interest. The respondent relied upon the fact that the appellant provided different figures relating to his business to HMRC for his tax liability and to the respondent to demonstrate that he met the income requirements for leave to remain applications. The respondent contended that these discrepant figures given to two different government departments

cannot be attributed to an innocent mistake; that such declarations were therefore made with the clear intention to deceive; and that the dishonesty was sufficiently serious to warrant a refusal on the grounds of the appellant's adverse character and conduct. The appellant's appeal against this decision was dismissed by First-tier Tribunal Judge Chana after a hearing on the 19<sup>th</sup> July 2022.

2. Permission to appeal was granted by Judge of the First-tier Tribunal LJ Murray on 5<sup>th</sup> November 2022 on the basis that it was arguable that the First-tier judge had erred in law in making an error of fact amounting to an error of law in finding that the appellant had taken a module in accounting as part of his degree which was not based on any evidence before the First-tier Tribunal. Permission was granted to argue all grounds. It was directed that the appellant's counsel should upload a witness statement in accordance with BW (witness statements by advocates) [2014] UKUT 568.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to whether any such error was material and the decision of the First-tier Tribunal should be set aside.

#### *Submissions – Error of Law*

4. In the grounds of appeal, in summary, it is contended as follows.
5. Firstly, it is argued, that the First-tier Tribunal erred in law because the decision was based on a mistake of fact amounting to an error of law at paragraphs 56, 65 and 68 of the decision: the oral evidence is not accurately recorded and there was an absence of anxious scrutiny. It is found by the First-tier Tribunal that the appellant gave oral evidence that he did an undergraduate module in accountancy as part of his degree. This is incorrect. The appellant has provided a statement to say he did not; the appellant took a degree in computer networks which would not include such a module; counsel who represented before the First-tier Tribunal (Mr S Karim) took notes and there is no record of such a question; the transcript of the proceedings (which had been requested) will also confirm that no such question was asked or answer was given. This mistaken factual material is then used to find that the appellant was not credible. There is a Rule 15(2A) application to adduce the evidence supporting this ground.
6. Secondly, it is argued, that the First-tier Tribunal erred in law because there was a failure to apply the correct standard of proof and apply material aspects of Balajigari v Secretary of State for the Home Department [2019] EWCA Civ 673. This is because reliance is placed on parts of the decision of R (on the application of Khan) v Secretary of State for the Home Department (Dishonesty; tax returns; paragraph 322(5)) [2018] UKUT 348 which were disapproved in Balajigari.
7. Thirdly, it is argued, that the First-tier Tribunal erred in law because of making irrational and inadequately reasoned findings at paragraphs 70 to 80 of the decision, with particulars of the contended irrationality set out in the grounds.
8. In a Rule 24 notice dated 31<sup>st</sup> March 2023 from Mr Tufan it is accepted for the respondent that the First-tier Tribunal made an error of fact amounting to an error of law with respect to finding that the appellant studied accounting as part of his degree. It is also accepted that this may well have been a material

factor in finding the appellant lacked credibility as a witness. As a result the respondent does not oppose the appeal, and suggests that the decision be set aside with no findings preserved and remitted for remaking to the First-tier Tribunal.

9. It was clear that an error of law could therefore be found by consent. I admitted the new evidence submitted with the Rule 15(2A) application. I confirmed that I found that the First-tier Tribunal had erred in law by making a mistaken finding of fact which was not due to any fault on the appellant's part, and that this was material to the assessment of his credibility and therefore his honesty, which in turn was central to deciding the appeal. I found that the decision and all findings should therefore be set aside, and the decision remade de novo. The parties argued that the matter should be remitted to the First-tier Tribunal for remaking due to the extent of remaking required. There had been three witnesses before the First-tier Tribunal and there were likely to be four for the remaking, as well as extensive documentary evidence. The time estimate was four hours. I agreed that the extent of remaking was properly characterised as extensive and so remittal for remaking to the First-tier Tribunal would be appropriate.

#### *Conclusions - Error of Law*

10. There is overwhelming evidence that the appellant did not give evidence that he had done an accountancy module as part of his degree and that this was not the case. This evidence includes the transcript of the hearing which does not reveal the appellant giving oral evidence that he did an undergraduate degree module in accountancy: the only oral evidence before the First-tier Tribunal in relation to his degree is that he did a BSc degree in computer networks as set out at line 34 on page 3 of the transcript. The appellant's degree module print out also confirms conclusively, I find, that he did no module in accountancy as part of his degree.
11. Reliance was placed on the baseless factual finding that the appellant had done an accountancy module as part of his degree at paragraphs 64 and 65 of the conclusions in the decision of the First-tier Tribunal Judge. I find that this factual error was a key finding that led the First-tier Tribunal to conclude that the appellant had not made an innocent mistake when submitting his tax return because his academic studies meant he was conversant with accounting procedures. It was therefore material in the dismissal of the appeal which turned upon whether the appellant could meet the requirements of the Immigration Rules or whether he failed to do so because he fell to be refused under paragraph 322 (5) as his character and conduct meant a grant of leave to remain was not in the public interest.

#### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal
3. I remit the remaking of the appeal to the First-tier Tribunal to be heard de novo by a Judge other than Judge of the First-tier Tribunal Chana.

**Fiona Lindsley**

**Case No: UI-2022-005981**  
**First-tier Tribunal No: HU/58142/2021**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4<sup>th</sup> April 2023**