



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

Appeal Number: IA/04731/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 February 2015**

**Decision & Reasons
Promulgated
On 4 February 2015**

Before

UPPER TRIBUNAL JUDGE PITT

Between

OLABODE OLUKAYODE SANNI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nizami, instructed by To1Tops Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge K F Walters promulgated on 2 July 2014 which refused the appellant's appeal regarding his application for indefinite leave to remain.
2. Judge Walters refused the appeal under the Immigration Rules with specific reference to paragraph 322(5) of the Immigration Rules which states as a ground for refusal:

“The undesirability of permitting a person concerned to remain in the light of his or her character, conduct or associations or because of a threat to national security.”

3. The application of paragraph 322(5) of the Immigration Rules arose in this matter as, whilst considering the appellant's application for indefinite leave to remain, it came to the respondent's attention that for the tax year 2010/11 the applicant had submitted an inaccurate tax assessment to HMRC. The tax assessment submitted by the applicant and on which he paid tax at the relevant time omitted his self-employed earnings for the year 2010/11. Thus far was common ground before First-tier Tribunal Judge Walters and before me.
4. The appellant maintained that he had not been responsible for or known about the incorrect tax assessment. When he found out from the respondent that incorrect tax had been paid for the tax year 2010/2011 he contacted his previous accountants to complain and also instructed new accountants to reassess his tax. He provided documents in these regards and these were before First-tier Tribunal Judge Walters.
5. At [10] Judge Walters summarised the evidence that he took into account which included the letters from the appellant's previous and current accountants generated after the refusal of his application for leave. At [26] and [31] Judge Walters referred to page 25 of the appellant's bundle of evidence. This was a letter dated 20 January 2014 from his previous accountants, TT Accountancy Services, taking “full responsibility” for the error in failing to declare the appellant's self-employed earnings in the 2010/2011 tax assessment.
6. The appellant's main ground of appeal is that First-tier Tribunal Judge Walters did not deal correctly, or at all, with this key piece of evidence.
7. Firstly, caution is needed before concluding that is so where, as above, he specifically mentioned this document twice.
8. Secondly, Judge Walters was not obliged to take this letter at its highest. He had a number of concerns about other aspects of the appellant's evidence. At paragraphs 41 to 43 of his determination he stated:

“41. I bear in mind the burden and standard of proof, throughout, and that, where dishonesty is alleged or found proved, the more serious the allegation the more cogent must be the evidence for it. To avoid any room for misunderstanding, having regard to the documentary and oral evidence before me, I am satisfied so that I am sure that, at the time material to this appeal, the appellant adopted an entirely cavalier and dishonest approach to tax returns made by him to HMRC, which were to be submitted on a self-employed basis. The appellant was well aware of his immigration status and the importance of submitting accurate and correct documentation to the respondent, the more so given figures he has supplied to the respondent as to his level of income, when securing his immigration status. The appellant's ready

concession at the hearing before me that he signed a blank self-assessment tax returns for completion by his previous accountants, to be based on whatever documents the appellant provided, for onwards submission to HMRC at a later stage, merely reinforces, in my judgement, his cavalier approach and the dishonesty he practiced. I find that, further, the reason the appellant has not pursued any formal complaint with his previous accountants' professional body is because he was complicit, throughout, in all that occurred.

41. I am no position to judge whether the appellant has since made a full disclosure in his alleged self-employed income during the relevant period, to the respondent and HMRC. His disclosures by his current accountants, Paperchase Taxation, are not supported by any or any complete and reliable material documentation I have seen; and I find that, moreover, such disclosures as have been made only occurred after the appellant was placed upon notice of the discoveries which led to the refusal of his application, the subject of this appeal. I find that, further and in the alternative, I cannot rely upon any dates provided by this appellant, nor any alleged self-employment receipts made to him, or submitted by him to HMRC. In short, I find the account of the appellant to be unreliable, throughout.
43. Given my findings summarised herein, I find the appellant plainly engages paragraph 322(5) of the Rules, which in turn engages paragraph 245CD(d) of the Rules, in that I am not persuaded the appellant can demonstrate any earnings other than those from his employer at the material time, London & South East Railway, and that he accordingly does not meet the requirements of Appendix A to the Rules. I find that, taken in the round, and bearing in mind the burden and standard of proof, the appellant has not provided any basis for challenging the assertions, analyses and conclusions in the respondent's Notice of Immigration Decision, and her letter giving reasons for refusal, and on the evidence before me I am satisfied that those assertions, analyses and conclusions are valid and tenable, and I reach similar conclusions myself for like reasons."

9. Judge Walters went on at paragraph 45 of his determination to state:

"45. Applying the relevant law to the established facts and on the totality of the evidence adduced before me, I find that the appellant has not discharged the burden of proof and reasons given by the respondent do justify the refusal."


10. Reading those paragraphs with the two clear indications that Judge Walters was aware of the letter admitting responsibility from the previous accountants, it is my view that they amount to adequate reasons as to why he did not accept the appellant's account of what happened or that responsibility lay only with the former accountants as asserted in the letter of 20 January 2014.
11. It is not my view, as suggested in the grounds, that Judge Walters' approach to the evidence is to "simply marginalise" or fail "to give adequate weight". As the paragraphs above show, Judge Walters

considered the relevant evidence, dealt with the material aspects of it, including that the appellant's case was that he was not in any way responsible for the incorrect tax return. He took into account all of the evidence that the appellant provided to explain the incorrect tax return but simply did not find that those matters were sufficient to rebut the respondent's view that the appellant's character as someone who had provided incorrect tax assessments to HMRC meant that paragraph 322(5) of the Immigration Rules applied.

12. It is also my view that Judge Walters took the correct approach as regards the burden of proof in that assessment. He was overtly astute at paragraph 6 and at paragraph 41 as to the need for cogent evidence where there is an allegation of fraud or dishonesty. I did not read [45], as set out above, as stating otherwise, noting as it does the need for the respondent to "justify" the refusal and for the appellant to discharge the burden arising thereafter, albeit paragraph [45] could have been somewhat more felicitously worded. Reading the decision fairly it is clear that Judge Walters considered that the evidence before him showed to a more than sufficient degree that the appellant had been dishonest and unable to rebut the points made against him by the respondent.
13. Where that is so I do not find an error in the decision of the First-tier Tribunal.

Decision

14. The determination of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed 

Date: 4 February 2015

Upper Tribunal Judge Pitt