



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

Appeal Number: HU/01273/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 May 2017**

**Decision & Reasons Promulgated
On 8 June 2017**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**MR ROOPENKUMAR KIRITBHAI PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bexson, instructed by Permits2work Ltd.

For the Respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

(Delivered Orally 26 May 2017)

Introduction

1. The appellant brings an appeal before the Upper Tribunal against a decision of First-tier Tribunal Judge Miller promulgated on 13 October 2016. The chronology of the appellant's stay in the United Kingdom is set out in detail in the First-tier Tribunal's decision, and I do not repeat it herein.
2. The appellant brought an appeal to the First-tier Tribunal against a decision of the Secretary of State (SSHD), dated 8 June 2015, refusing his application for leave to remain made on the grounds of long residence.

SSHD's decision letter

3. In her decision letter the SSHD, *inter alia*, concluded that the appellant had acted deceptively in one of his earlier applications by misstating therein the level of his earnings. The SSHD relied, in coming to such conclusion, on information provided by HMRC as to the amount of income the appellant had declared for the years 2009 to 2014. Such information was subsequently compared with assertions made by the appellant, in relation to his income, in his previous application – it being observed that there were significant differences.
4. The SSHD’s decision letter refers, on page 3 of 7, to the appellant having attended an interview on 30 April 2015 with the Home Office and there are quotations from that interview contained within the decision letter. Ostensibly it was the HMRC information taken together with the contents of the aforementioned interview that the SSHD relied upon in refusing the appellant’s application pursuant to paragraph 322(2) of the Immigration Rules.

FtT’s Decision

5. The appellant’s appeal before the FtT came before Judge Miller on 8 September 2016. At the outset of the hearing Ms Bexson, who also appeared below, identified that the SSHD had not produced a copy of the record of the aforementioned interview. The Presenting Officer informed the FtT that the interview record was not on the SSHD’s file.
6. Neither party sought an adjournment of the proceedings. Judge Miller considered for himself whether to adjourn the hearing but concluded that it was not appropriate to do so in circumstances, *inter alia*, where neither party had sought an adjournment [10]. I observe that no mention is made in Judge Miller’s decision of consideration being given to the issue of fairness.

Permission to appeal

7. Permission to appeal was granted on 17 March 2017, paragraph 4 thereof stating as follows:

“Given that one of the issues in the case was deception and despite the fact that the judge has observed at paragraph 29 of the decision that the appellant accepted the discrepancies claiming they came about as the result of miscommunications with his accountant it is arguable that the judge proceeded with the hearing in the absence of the full provision of the available evidence, in circumstances where potential prejudice arose in relation to the appellant.”

Discussion and Decision

8. At the hearing today Mr Tarlow, quite properly in my view, accepted that judge Millar ought to have adjourned the hearing and directed the SSHD to use her best endeavours to produce a copy of the interview record. The reasons for that are, it seems to me, obvious. First, the interview record

may contain information which is of assistance to the appellant's case. Second, it may be that when taken in its context the evidence from the interview relied upon by the SSHD in her decision letter is not worthy of the weight attached to it by the FtT.

9. Given Mr Tarlow's concession, which is entirely properly made, I need say no more than that the decision of the First-tier Tribunal is set aside - the appellant not having had a fair hearing.
10. Ms Bexson submitted that the proper course would be to remit the appeal back to the FtT for consideration afresh. Mr Tarlow did not object to this course. In all the circumstances, I agree that this is the appropriate course.

Notice of Decision

The decision of the FtT is set aside and the appeal is remitted to the FtT for consideration afresh.

Direction

The Secretary of State is directed to use her best endeavours to file and serve a copy, by no later than 4 weeks from 26 May 2017, of the record of the interview undertaken with the appellant on 30 April 2015.

Signed:



Upper Tribunal Judge O'Connor
Delivered orally 26 May 2017