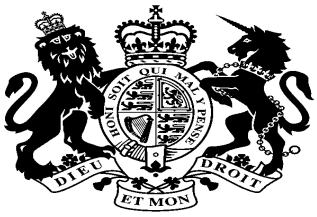

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02838/2018
HU/04757/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 20 March 2019	**On 29 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANISH MAHENDRAKUMAR PATEL
HETALBEN MANISH PATEL
(ANONYMITY ORDER NOT MADE)

Respondents

Representation:
For the Appellant: Mr S Whitwell (Senior Home Office Presenting Officer)
For the Respondents: Mr D Bazini (for AYJ Solicitors)

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal of 14 January 2019 allowing the appeals of Manish Mahendrakumar and Hetalben Manish Patel, husband and wife, citizens of India born 17 August 1985 and 12 August 1988. They had appealed against the refusal of their applications for further leave of 10 January 2018.

2. Their applications had been refused because of the Secretary of State's conclusion that Mr Patel (the First Respondent) lacked good character, having failed to adequately explain discrepancies in the earnings he had reported to UKVI for immigration purposes and to HMRC for tax purposes.

3. The discrepancy arose from the fact that his extension application of May 2013 within the Tier 1 General route asserted earnings of £37,758 by way of £13,715 from employment and £24,043 from self-employment, whereas for the tax year ending April 2013 he had initially declared a total income of £16,755 (based on earnings as £12,450 from employment and £4,305 from self-employment). This was shown by information received from HMRC, subsequently confirmed by Mr Patel himself. A revised tax calculation, which he revealed to the Secretary of State in response to a tax questionnaire sent to him in May 2017, indicated that he had submitted an amended return in January 2016.

4. The Secretary of State concluded that Mr Patel had shown bad character in his dealings with UK government departments; his tax correction had been made so close to the date of his settlement application as to be suspicious. This was all considered highly inconsistent.

5. Before the First-tier Tribunal, Mr Patel gave a detailed explanation of what had happened. A chartered accountant had produced his accounts for the immigration extension application. However, Mr Patel had originally completed his own tax returns from March 2010, as this was cheap and easy. He used online tutorials and videos as guidance. However, he had misunderstood the basis on which household expenses could be charged against profits: he had offset the whole of his household expenses against profits rather than only a proportion of them.

6. Mr Patel first instructed Kay Plus Accountancy as his accountant in December 2014. Kay Plus did not identify any problem with his past tax reporting, as they relied on his P60s, bank statements and invoices, without making any further enquiry of him. He had been unable to contact Kay Plus in November 2015, when he first realised there was a problem when he was looking to support his claimed earnings when making a mortgage application in November 2015. So he went to another accountant, (named Mr Patel like the First Respondent), to confirm the reliability of his earnings; but the accountant Mr Patel was concerned about the level of expenses claimed in the financial year ending April 2013 and questioned the First Respondent about it. This revealed the error in question, and the accountant then informed HMRC, telling Mr Patel that there was a six-year window within which to amend his tax affairs. He duly made his January 2016 amended return, and received notice of his corrected tax liability in April 2016; he had paid off the outstanding tax balance by November 2016. The enquiries of the new accountant also revealed some under-reporting of tax liability for the year ending April 2010 for which he made recompense at the same time.

7. The First-tier Tribunal reviewed the evidence before it, and found that whilst the Secretary of State had successfully put Mr Patel's character in issue given the original earnings discrepancies, Mr Patel had subsequently provided a cogent explanation for his conduct. It found that Mr Patel had withstood thorough and

competent cross examination and on balance found him to be a truthful witness. Having regard to the considerations identified in *Khan,* Mr Patel's explanation was a credible one, particularly when it was borne in mind that it had been consistently provided to the Secretary of State once enquiries had been made as to his tax reporting. There was also an accountant's letter of October 2017 which confirmed the position, and HMRC had amended his tax liability and were now fully aware of the situation. The Judge noted that Mr Patel had been careless in his dealings, surprisingly so for an educated man, but it was nevertheless plausible that he had misunderstood the extent of expenses that could be claimed. Accordingly the appeal was allowed on human rights grounds.

8. The Secretary of State appealed on the basis that the First-tier Tribunal had erred in law by failing to have express regard to paragraph 25 of Appendix A to the Rules. Permission to appeal was granted on this issue, expressly without enthusiasm by the Judge, on the basis that this submission flagged up the need for thorough attention to have been given to whether there was an adequate explanation for the different income figure having been given in the immigration extension application.

9. Mr Whitwell made submissions of admirable concision, acknowledging that as indicated by the Judge granting permission that there was only just enough in the Home Office case to warrant a hearing in the Upper Tribunal. He acknowledged that the Appendix A argument had not been put below, and that there was no duty on a Judge to give extensive reasons when accepting a witness's credibility. Nevertheless he submitted that there were very significant differences between the earnings reported to HMRC and UKVI, and the Judge had had insufficient regard to this factor.

10. Mr Bazini pointed to the Respondent's witness statement, the thrust of which had been summarised by the Judge below. This was an appeal where the Judge had made clear favourable credibility findings on evidence which addressed every relevant issue, including the difference between profits and earnings: that was necessarily inferred by her acceptance of the First Respondent's evidence.

Decision and reasons

11. During the currency of the Tier 1 General route, Appendix A stated:

> "25. Where the earnings are the profits of a business derived through self-employment or other business activities:
>
> (a) the earnings that will be assessed are the profits of the business before tax. Where the applicant only has a share of the business, the earnings that will be assessed are the profits of the business before tax to which the applicant is entitled, and
>
> (b) the applicant must be registered as self-employed in the UK, and must provide the specified evidence."

12. The headnote in *Khan* [2018] UKUT 384 (IAC) states:

> "(i) Where there has been a significant difference between the income claimed in a previous application for leave to remain and the income declared to HMRC, the Secretary of State is entitled to draw an inference that the Applicant has been deceitful or dishonest and therefore he should be refused ILR within paragraph 322(5) of the Immigration Rules. Such an inference could be expected where there is no plausible explanation for the discrepancy.
>
> (ii) Where an Applicant has presented evidence to show that, despite the prima facie inference, he was not in fact dishonest but only careless, then the Secretary of State must decide whether the explanation and evidence is sufficient, in her view, to displace the prima facie inference of deceit/dishonesty.
>
> (iii) In approaching that fact-finding task, the Secretary of State should remind herself that, although the standard of proof is the "balance of probability", a finding that a person has been deceitful and dishonest in relation to his tax affairs with the consequence that he is denied settlement in this country is a very serious finding with serious consequences.
>
> …
>
> (v) When considering whether or not the Applicant is dishonest or merely careless the Secretary of State should consider the following matters, inter alia, as well as the extent to which they are evidenced (as opposed to asserted):
>
> > …
> >
> > iii. Why the Applicant did not realise that an error had been made because his liability to pay tax was less than he should have expected;
> >
> > iv. Whether, at any stage, the Applicant has taken steps to remedy the situation and, if so, when those steps were taken and the explanation for any significant delay."

13. Toulson LJ in *JK (Democratic Republic of Congo)* [2007] EWCA Civ 831 §31 reminds the reader that it may be unrealistic to expect a Judge who accepts oral evidence to do very much more than to set out the competing considerations arising from the evidence and then to state his conclusion upon them:

> "The degree of reasoning required to support a finding of fact must depend on the circumstances. If a judge disbelieves a witness in evidence, he must obviously state why he disbelieves it. If he believes a witness's evidence, there may be not much more that the judge can say than to refer in summary to the main points advanced to the contrary, together with the witness's response to them, in order to show that the judge has considered them, and to express his conclusion that he finds the witness to be credible."

14. In this appeal the First-tier Tribunal gave full reasons for accepting Mr Patel's credibility. They are certainly adequate to the degree that no party to the appeal could be confused or misled as to the Judge's thinking: she concluded that he had given cogent evidence that had withstood sustained cross examination. She was clearly alive to the inherent improbability that an educated person would make a mistake of the scale here.

15. The Secretary of State's reliance on the Appendix A requirements for earnings to be established (wholly unsurprisingly) by profits rather than turnover simply amounts to an attempt to elevate a dispute with the factual findings to the terrain of error of law. However, it fails so to do. The Judge was clearly alive to the fact that it was profit rather than turnover that is of central concern for the acquisition of points in a Tier 1 General application. That is demonstrated by her clear understanding of the Respondent's explanation, which was that he had grossly overcharged the expenses that were deductible against his business's profits. He had deducted all household expenses on the basis that he worked from home, when in reality only a proportion of those expenses would have been deductible.

16. One can cross-check the cogency of the Judge's findings by reference to the matters identified as potentially relevant in these cases in *Khan*. Of course, this is not a case where an accountant was blamed for the mistake: Mr Patel took responsibility for his tax returns himself. The explanation of the timing of his discovery of the error (ie when he was establishing his earnings for the purpose of a mortgage application) was considered plausible. And all this arose in a context where he had made another mistake in his tax returns for the year ending April 2010, at a time when he did not in fact have to demonstrate earnings for Tier 1 General purposes, and which would not have been within the period normally examined by the standard enquiry process now instigated in this class of case (which concentrates on the entry point and extension point in that route).

17. Accordingly I find there to be no material error of law in the reasoning of the First-tier Tribunal.

Decision:

The appeal is dismissed.

Signed: Date: 20 March 2019

Deputy Upper Tribunal Judge Symes