



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/04573/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 19 December 2018

Decision & Reasons Promulgated  
On 18 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DARSHAN NARAN HIRANI  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Respondent: Ms H Aboni, Home Office Presenting Officer

For the Respondent: Mr J Gajjar, Counsel instructed by Tharmina Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal to allow the Respondent's appeal against the decision to refuse his human rights claim.
2. On 17 August 2016 the Respondent applied for indefinite leave to remain in the UK on the basis of 10 years residence and his private life in the UK. The application was refused, inter alia, under the general grounds for refusal (with reference to Paragraph

322(5) of the Immigration Rules) on the basis that the Respondent had given false information about his earnings in a Tier 1 (General) leave to remain application on 18 January 2011 (“The 2011 application”).

3. In the 2011 application the Respondent was awarded 20 points under the “Previous earnings” category for earning between £35,000 and £39,999.99. In the application he declared that he had an income of £36,524.29. This was said to comprise £16,263.29 from employment and £20,261 from self-employment.
4. In the reasons for refusal letter dated 25 January 2018, the Secretary of State contrasted the figures given by the Respondent in the 2011 application with the HMRC tax calculations for 2010/11 where the total income received is stated as £17,503 (comprising of £15,500 from employment and £2,003 from self-employment).
5. It is also noted in the reasons for refusal letter that the total income for the previous tax year (2009/10) is only £16,066.70 in the HMRC calculation and that the total income for 2009/10 and 2010/11 combined (covering 24 months) equates to £33,569.70, which is less than the amount claimed in the 2011 application of £36,524.29.
6. In light of the above described discrepancies, the Secretary of State reached the view that the Respondent had misrepresented his earnings in order to reduce his tax liability and/or to obtain leave to remain.

### **Decision of the First-tier Tribunal**

7. The Respondent appealed to the First-tier Tribunal where his appeal was heard by a panel comprising of Designated Judge of the First-tier Tribunal Woodcraft and Judge of the First-tier Tribunal Oliver (“the Panel”).
8. The Panel recognised that there appeared to be a discrepancy between the income declared on the 2011 application and the HMRC tax calculations, but found that the Respondent gave a satisfactory explanation which they accepted.
9. The Respondent’s explanation, in sum, was that income for the 2010/11 tax year was declared the following tax year, which was permissible because he only registered as self-employed with HMRC on 4 August 2010.
10. At paragraph 17 of the decision, the panel concluded that:
 

“Having accepted the [Respondent’s] explanations, we do not find that his conduct or character make it undesirable to permit him to remain in the United Kingdom under paragraph 322(5) of the rules.”
11. The appeal was allowed on human rights grounds on the basis that as the Respondent satisfied the requirements of paragraph 276D of the Immigration Rules “the usual public interest in the maintenance of fair but firm immigration in the circumstances loses its force”.

## **Grounds of Appeal and Submissions**

12. The grounds of appeal submit that the judge failed to provide an adequate explanation for the conclusion that a credible explanation had been given for the discrepancy between the figures in the 2011 application and in the HMRC documentation. The grounds also contend that the panel failed to address the fact that the Respondent's declared income over the two tax year periods of 2009/10 and 2010/11 add up to less than the income declared in the 2011 application, which was for a 12 month period only.
13. At the error of law hearing, Ms Aboni reiterated the arguments in the grounds of appeal. She contended that there is a large discrepancy between the HMRC figures and 2011 application figures and that this has not been resolved or addressed by the Panel, who have failed to give an explanation to justify allowing the appeal.
14. Mr Gajjar responded by arguing that this is not a case where there had been an underpayment of tax. He referred to paragraph 12 of the decision where it is stated:

"The presenting officer was asked if any tax had been avoided. She was unable to assert that it had."
15. He maintained that the Respondent had never amended his tax return and there had been no additional tax liability. He contended that what appeared to be a discrepancy was merely the consequence of the tax regime, which allowed the Respondent to declare income for the 2010/11 tax year in 2011/12.

## **Analysis**

16. In the 2011 application the Respondent claimed to have earned £36,524.29 in the 2010/11 tax year.
17. In the HMRC tax calculation for the year 2010/11 the stated income is £17,503.
18. There is clearly a substantial discrepancy between the two figures.
19. The Respondent, in his witness statement (as well as orally) maintained that the reason for the discrepancy is that the income he earned in the 2010/11 tax year was declared in the 2011/12 tax year. In the 2011/12 tax year he declared a net profit of £17,945. When this is combined with the income from the 2010/11 period it brings the total into approximate alignment with the 2011 application. The Respondent submits that he was entitled to declare his income in this way because he had started a new business.
20. The challenge to the decision on the basis of a lack of adequate reasoning does not succeed because the Panel explained that it accepted the evidence given by the Respondent. Although the Respondent's explanation was not set out in detail in the decision, it is clear from the Respondent's witness statement what his explanation was.

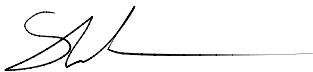
21. Although many judge's may not have accepted the Respondent's explanation, it is, in my view, plausible that the income he declared in 2011/12 was in respect of income earned in 2010/11 and therefore the conclusion reached by the Panel (that "[t]he [Respondent] has given a full explanation for the figures submitted which we accept") was one that was open to it.
22. The appeal is therefore dismissed.

**Notice of Decision**

The appeal is dismissed.

The decision of the First-tier Tribunal does not contain a material error of law and stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 9 January 2019