



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

Appeal Number: HU/04664/2018

THE IMMIGRATION ACTS

Heard at Field House

On 31st January 2019

**Decision & Reasons
Promulgated
On 27th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR S M D I A J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nath, Counsel

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 30th December 1975. The Appellant made an application on 14th March for indefinite leave to remain in the UK on the basis of long residence and on the basis of his private life. The Appellant's immigration history is set out in some substantial detail in the Notice of Refusal. He first applied for entry clearance in the UK as a student migrant back in December 2006. His current application was dismissed by Notice of Refusal dated 17th January 2018.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Thew sitting at Taylor House on 21st September 2018. In a

decision and reasons promulgated on 15th October 2018 the Appellant's appeal was allowed.

3. On 15th October 2018 the Secretary of State served Notice of Appeal to the Upper Tribunal. On 5th December 2018 Judge of the First-tier Tribunal P J M Hollingworth granted permission to appeal. Judge Hollingworth noted that at paragraph 33 of the decision the judge had stated that the crux of the Respondent's case was that that amendment and the responses in interview in the context of the operation of the self-employed business of the Appellant established on a balance of probabilities that the Appellant was dishonest and had made false representation in his applications in 2011 and 2013. Judge Hollingworth considered that it was arguable that the First-tier Tribunal Judge had set out an insufficient analysis and findings in the context of the legitimacy of the business conducted by the Appellant in dealing with a core issue in the case which the judge had recognised as such.
4. On 25th January 2019 the Appellant's solicitors lodged a skeleton argument/Rule 24 response to the Ground of Appeal. That is a detailed document and I have given it full consideration. It runs to some 53 paragraphs.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by Mr J. For the purpose of convenience throughout the appeal process I refer to Mr J hereinafter as the Appellant and the Secretary of State as the Respondent. The Appellant appears by his instructed Counsel Mr Nath. The Secretary of State appears by her Home Office Presenting Officer Mr Tufan. With the consent of both sides I have anonymised this matter.

Submission/Discussion

6. This is an appeal where the refusal stems predominantly from the conclusion that the Secretary of State was satisfied that the Appellant had made false representations in his application for leave made on 25th March 2011 and on 4th April 2013. The appeal that came before the First-tier Tribunal Judge noted that the Secretary of State considered that within the Appellant's application, the Appellant had previously given false figures relating to his financial circumstances so far as they relate to financial circumstances from both employment and latterly self-employment. I note as Mr Nath points out to me that these issues are set out in some considerable detail at paragraph 9 headed analysis of evidence and conclusions of the First-tier Tribunal Judge's decision.
7. As Mr Tufan advises me the grounds are relatively short and succinct. They note that at paragraph 44 of the determination the First-tier Tribunal Judge found that the Appellant had been careless rather than dishonest but submit that that finding was contrary to the facts of the case. He submits that the Notice of Refusal had gone into some detail explaining why the Secretary of State did not accept the Appellant was in legitimate employment for most of his time in the UK and found that the Appellant's

accounts of his claimed businesses were not credible. Further he contends that although the Tribunal considered this issue at paragraphs 27 to 31 of the determination, the judge had made no findings and that the Tribunal was more concerned about the Appellant's tax liability.

8. Mr Tufan reiterates the Grounds of Appeal submitting that by failing to address the crucial issue of whether or not the Appellant had legitimate businesses, the Tribunal had failed to make findings on a core element of the appeal and further without findings on these businesses the other subsequent findings were unsustainable. He noted that the Tribunal went on to make specific findings about the 2011 tax return at paragraph 44 of the determination but submits that the judge's assessment of carelessness was incomplete without a finding on the wider evidence as to whether the Appellant received earnings through legitimate businesses and therefore that the Tribunal's decision was unsafe. He finally submits that the judge had a requirement to consider whether the Appellant's activities were genuine and submits that they were not.
9. In response Mr Nath starts by taking me to his skeleton argument. He submits that all the Secretary of State is doing is disagreeing with the findings of the judge and that all the judge granting permission has done is merely adopt the grounds contended by the Secretary of State. He submits that the First-tier Tribunal Judge was perfectly entitled to accept some evidence and reject other in the Appellant's findings.
10. He goes on to analyse the decision and assessment made by the judge. He notes that at paragraph 37 the judge has systematically gone through the figures provided by the Appellant and that it was accepted by HMRC as to what the amount owing was. He thereafter notes that the Appellant had provided clear evidence to the Respondent when making his applications in 2011 and that that had satisfied the Respondent at that stage. Thereafter the judge goes on to make findings that the Appellant had been careless and had not been dishonest. He submits that the crux of the matter is now one of disagreement and that there is nothing wrong with the reasoning of the judge. There have been findings made that the Appellant is not dishonest and the judge has addressed this and gone on to address the issues relating to the Appellant's business and documentary evidence at paragraphs 41 and 42.
11. Mr Nath accepts that paragraph 33 sets out what the judge has said with regard to his tax obligations but thereafter the judge has gone on in some detail in the findings she has made at the next ten paragraphs to analyse the financial position in which the Appellant found himself and the errors in the tax returns and justified her conclusions.
12. He submits that the First-tier Tribunal Judge considered the correct standard of proof and was correct in finding that the first amendment made was as a result of an accountant's mistake and not due to any dishonesty on the Respondent's part. Further he submits that the judge was correct in coming to the conclusion that although the Appellant and his customer held the same address, and that that may look suspicious,

that did not discharge a legal burden of dishonesty. Thereafter the judge made a finding that the Respondent's conduct fell short of that contemplated by paragraph 322(2) of the Immigration Rules and that the judge was entitled to reach that conclusion. He asked me to find that the submissions made by the Secretary of State amount to nothing more than a disagreement and to dismiss the appeal.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

15. This is one of a number of cases that now comes before the Tribunal where a challenge is made under paragraph 322 of the Immigration Rules by the Secretary of State. The issue before me is whether or not the judge has materially erred in law. I find that the judge has not. It is important I give my reasons. As a starting point this decision has to be looked at as a whole. This is a judge who has given a very detailed and thorough analysis of the evidence. She has started by detailing the appeal and the immigration history and gone on to give full consideration as to the basis upon which the reasons for refusal are maintained. These are particularly pursuant to paragraphs 276D and 276ADE and there is reference therein to paragraph 322(1A) and (2) to the effect that the Secretary of State had been satisfied that the Appellant had made false representations in two applications. Consequently, the judge was aware of the basis upon which the Secretary of State had made his findings and upon which the appeal was thereafter based. This is further emphasised where thereafter the judge refers to the relevant Immigration Rules and then goes on to

analyse the evidence and draw conclusions. That is a substantial task. She has looked at the issues with regard to mistakes on the tax returns of the Appellant for the years 2011/12 and 2012/13. She has analysed the documentation in some detail and at paragraph 33 notes the crux of the Respondent's case that the amendment and the responses at the interview in the context of the operation of a self-employed business allegedly established on a balance of probabilities that the Appellant was dishonest and had made false representation in his applications made in 2011 and 2013.

16. Thereinafter the judge has gone on to note the burden of proof and has recited quite correctly what that burden of proof is. From paragraph 37 through to paragraph 40 the judge has noted the evidence that was produced and has concluded that the Appellant clearly provided evidence to the Respondent when making his applications and that satisfied the Respondent at that stage. The judge quite rightly accepts that it does not follow that the Appellant is not dishonest merely because of evidence he produced at that time.
17. The judge has consequently gone on to make findings having set out the facts and considered the evidence. I note that the grounds contend that the findings of the First-tier Tribunal Judge are contrary to the accepted facts of the case. I do not find such a contention is sustainable. The judge has noted the facts in this case and it is open to the judge to make her own findings having considered the evidence in the round. The judge has come to the conclusion and given reasons as to why she found that the Appellant was not dishonest. It is further misleading of the Secretary of State to contend that the judge had not addressed her mind to the genuineness of the business. It is clear from paragraph 40 that the judge has.
18. I consequently am of the view that the Appellant's application is, as Mr Nath submits, simply an attempt to re-argue the case. This is a judge who has given very careful and full consideration to the facts and has set out detailed reasons for the findings that she has made. She has not erred in law or in fact. In such circumstances the decision discloses no material errors of law and the findings are ones which the judge was entitled to make. For all the above reasons the Secretary of State's appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 15th February 2019

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date: 15th February 2019

Deputy Upper Tribunal Judge D N Harris