Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/05019/2018**

THE IMMIGRATION ACTS

Heard at Field House
On 25 October 2018

Decision & Reasons Promulgated
On 24 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SHAHID NASEEM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Khan (counsel) instructed by A_R Law Chamber
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge G Wilson promulgated on 7 August 2018, which dismissed the Appellant's appeal.

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Background

3. The Appellant was born on 19 March 1977 and is a national of Pakistan. The appellant entered the UK on 8 September 2005 as a student. The respondent granted leave to remain in the UK a number of times. On 2 July 2013 the respondent granted the appellant further leave to remain as a tier 1 (general) migrant until 2 July 2016. On 1 July 2016 the appellant applied for indefinite leave to remain on the basis of 10 years continuous lawful residence. The respondent refused that application on 24 January 2018.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge G Wilson ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 4 September 2018 Judge Simpson gave permission to appeal stating *inter alia*

> "Permission to appeal is granted for the following reasons:
>
> > (i) it appeared that at his appeal hearing the appellant was legally represented, however he now acts in person when applying for permission to appeal. Accordingly the totality of the decision was read with care to ensure no *Robinson* order of arguable error or errors of law were disclosed;
> >
> > (ii) there appeared when assessing matters with reference to the Immigration Rules (the Rules), and paragraph 276B(ii) & (iii), 10 years continuous lawful residence in the UK, and paragraph 322(5), that consideration of a matter of an order of serious note for an appellant charges by the respondent concerning his undesirable conduct there appeared *inter alia* arguably lack of regard that HMRC or any other agency had taken action against the appellant concerning conduct in respect of his tax affairs of which the respondent had relied, and further arguably an inadequacy of reasoning concerning that factor having not weighed in the appellant's favour;
> >
> > (iii) all grounds are arguable."

The Hearing

5.(a) For the appellant, Mr Khan moved the grounds of appeal. He took me straight to [34] of the decision, where the Judge says that he attaches little weight to a letter from the appellant's accountant (reproduced at page 12 the appellant's bundle). The Judge attaches little weight to that letter because no witness came to speak to the letter. Mr Khan said that the Judge was wrong to attach little weight to the accountant's letter, and that if oral evidence was required from the accountant the Judge should have considered adjourning the hearing to enable the author of the letter to give evidence.

(b) Still focusing on [34] of the decision, Mr Khan told me that the Judge's findings

(i) that it is implausible that errors in filing tax returns could be made in two non-consecutive tax years and

(ii) that the appellant's continued use of an incompetent accountant was implausible

are unsafe. He told me that no expert evidence was led and referred me to the terms of the accountant's letter. He told me that the accountant's letter is "*the keystone to*" the entire appeal.

(c) Mr Khan then moved to [35] of the decision. There the Judge is critical of the appellant's evidence. He told me that English is the appellant's second language and that the appellant was nervous when giving evidence. He told me that the Judge failed to take account of these factors when assessing the appellant's credibility.

(d) Mr Khan then turned to the Judge's article 8 private life assessment. He told me that at [38], when the Judge considers paragraph 276 ADE of the rules, the Judge failed to take account of the appellant's residence in the UK since 2005. He told me that the Judge's proportionality assessment (carried out from [40] onwards) is inadequate. He told me that the Judge should have acknowledged that HMRC have not sought prosecution of the appellant but have entered into an arrangement for payment of outstanding tax.

(e) Mr Khan urged me to set the decision aside.

6.(a) For the respondent, Ms Pal told me that the decision does not contain an error of law, material or otherwise. She took me through the Judge's findings of fact between [32] and [37] of the decision. She told me that the Judge made carefully reasoned findings of fact drawn from the evidence and that each of the findings of fact were reasonably open to the Judge. She told me that the grounds of appeal amount to mere disagreement with the facts as the Judge them to be.

(b) Ms Pal reminded me that the appellant was legally represented before the First-tier Tribunal, and said it is for the appellant's solicitors to decide which witnesses to lead. It was the appellant's solicitors who decided not to lead the appellant's accountant in evidence. Ms Pal reminded me that the appellant's solicitors did not seek an adjournment & that the appellant's solicitor did not suggest that the appellant requires an interpreter or that the appellant was too nervous to give evidence.

(c) Ms Pal told me that the Judge considered all relevant factors, including the length of time the appellant has been UK, and that the Judge's consideration of article 8 ECHR grounds of appeal was flawless. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The respondent's decision relies on paragraph 322(5) of the immigration rules. Paragraph 322(5) of the Immigration Rules is one of the "*general grounds for refusal*". It states that applications for leave to remain should normally be refused where it would be undesirable for a person to remain in the UK in light of their conduct, character or associations. The respondent's position is that the appellant failed to declare his self-employed income in the tax years from 2011 to 2013. The appellant's position is that there is an innocent explanation and that he has now put his tax affairs in order.

8. At [14] the Judge quotes directly from the letter which Mr Khan describes as the keystone to the appellant's appeal. At [33] the Judge considers the difference between the figures the appellant included in his tax returns and the figures that he relied on in his applications for leave to remain. The Judge carries out a careful analysis of the difference in the figures for the various tax years and explains why he rejects the appellant's explanation. In the final sentence of [33] the Judge focuses his findings, explaining that the appellant was earning in excess of £50,000 in years where he paid little or no tax.

9. At [34] the Judge analyses the letter from the appellant's accountant and explains why he attaches little weight to that letter. The question of weight to be attributed to any piece of evidence is a question for the Judge. In Green (Article 8 – new rules) [2013] UKUT 254 (IAC) the Tribunal said that "*Giving weight to a factor one way or another is for the fact-finding Tribunal and the assignment of weight will rarely give rise to an error of law*". The Judge sets out adequate reasons for attaching little weight to the accountant's letter. The appellant was legally represented before the First-tier Tribunal. It was for the appellant and his legal advisers to decide what evidence is necessary and which witnesses will be called. Neither the appellant nor his solicitor sought an adjournment. The Judge cannot be faulted for making his findings on the basis of the evidence placed before him.

10. At [35] the Judge finds that the appellant is neither a credible nor a reliable witness. The Judge gives adequate reasons for his finding. Assessing credibility is part of the task entrusted to the Judge. There is nothing wrong with the Judge's credibility findings at [35]. At [37] the Judge draws his findings together and concludes that the respondent correctly relies on paragraph 322(5) of the immigration rules. There is, of course, no appeal under the Immigration Rules. The only competent ground of appeal open to the appellant is on article 8 ECHR grounds.

11. At [38] the Judge considers paragraph 276ADE of the rules. In the second sentence of [35] the Judge records that the appellant has been in the UK since 2005. There is no merit in Mr Khan's submission that the Judge did not take account of the length of the appellant's residence in the UK when considering paragraph 276ADE

of the rules. The length of the appellant's residence in the UK can be found throughout the decision and is repeated at the very beginning of the Judge's consideration of paragraph 276 ADE.

12. In SSHD v Kamara [2016] EWCA Civ 813 it was held that the concept of integration into a country was a broad one. It was not confined to the mere ability to find a job or sustain life whilst living in the other country. It would usually be sufficient for a court or tribunal to direct itself in the terms Parliament had chosen to use. The idea of "integration" called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life.

13. In Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) it was held that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of "very significant obstacles" in paragraph 276 ADE of the Immigration Rules. In Parveen v SSHD [2018] EWCA Civ 932 Underhill LJ commented on that observation "*I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant""*.

14. At [38] the Judge finds that the appellant has been in the UK since 2005 but spent 28 years in his home country. That is a clear finding that the appellant has spent the majority of his life in Pakistan. The remainder of the Judge's findings at [38] could only lead the Judge to the conclusion he reaches in the final sentence of [38] - that there are no significant obstacles to reintegration in Pakistan.

15. The Judges assessment of article 8 outside the immigration rules is carried out between [40] and [46]. As the appellant is a single, adult, male with no dependents it is surprising that the Judge found that article 8 family life is engaged but having found that both family and private life exist for the appellant in the UK the Judge carries out a complete proportionality assessment between [43] and [46] of the decision.

16. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the

material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

17. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

18. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

19. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 7 August 2018, stands.

Signed Date 26 October 2018
Deputy Upper Tribunal Judge Doyle