



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/14485/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 9<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 9<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

BAMIKOLE ILOSIWAJU OLAPOSI ADELADUN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim (Counsel)  
For the Respondent: Mr P Duffy (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Kinnell, promulgated on 15<sup>th</sup> November 2017 following a hearing at Hatton Cross on 30<sup>th</sup> October 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.
2. The Appellant, a citizen of Nigeria, is a male, and was born on 7<sup>th</sup> March 1980. On 12<sup>th</sup> November 2015, he applied for permanent leave to remain in the UK on the basis of ten years' lawful residence in the United Kingdom. He had entered the UK as a student on 15<sup>th</sup> October 2005 with valid leave which had subsequently been extended. The issue was that the earnings that he had declared under the Tier 1 scheme were inconsistent with the earnings that he had declared to HMRC. The question was

whether he had done so in order to reduce his tax liability by falsely representing his earnings to the UK Visa in order to meet the points required in the Immigration Rules, such that his application could properly be refused under paragraph 322(5) of the Immigration Rules.

3. The judge considered the Appellant's explanation that he simply made an honest mistake claiming capital expenses as revenue when declaring his income. He had purchased a number of assets which he strongly thought he could offset against his tax liability (paragraph 26). The judge observed that "it is striking that HMCR confirmed that for the tax year 2009/2010 a total income from all sources of £11,512.11 was declared..." and the Judge referred to the net income and to the net profit specifically as declared by the Appellant. Yet, the Appellant had claimed 20 points for earnings of £51,448.24 which was significantly higher. The judge observed that :-

"The Appellant was declaring income over the two tax years of approximately £32,000 when his earnings for the two years during which he made his applications for further leave aggregate to about £106,000. That is a very significant difference, and one might have thought that in the case of a person such as the Appellant, with his accounting experience, albeit at that stage he had not been admitted as a certified accountant, alarm bells might have rung in his mind" (paragraph 33).
4. The judge went on to observe that paragraph 322(5) is one ground on which leave to remain in the United Kingdom should normally be refused and it applies where it is undesirable to permit the person concerned to remain in the light of his conduct, which includes convictions, character and associations, or the fact that he represents a threat to national security (paragraph 36). The judge went also on to say that the Appellant does not meet the requirements of Appendix FM or paragraph 276ADE (paragraph 37).
5. Permission to appeal was granted on 15<sup>th</sup> May 2018 on the basis that the Appellant was accepted to have been lawfully resident in the UK for over ten years and the judge in dismissing the appeal concluded that the Respondent had not shown the Appellant did not meet the suitability requirements, which raised a question mark as to the rationale for dismissing the appeal.
6. At the hearing before me, Mr Duffy, the Senior Home Office Presenting Officer stated that it might be better if he goes first before this Tribunal, even though this was the appeal of the Appellant. He said that the only issue in this appeal was that the Appellant had failed to satisfy the suitability requirements on general grounds but the judge had found that it was not true that the Appellant had been guilty of dishonesty, and had concluded that this had just been an error on his part, the appeal should have been allowed. The Appellant had met the requirements of paragraph 276ADE. If he met the Rules his appeal should have been allowed.
7. Mr Karim accepted that if this was the case, then the appeal should be allowed outright and this was also agreed by Mr Duffy in the circumstances.
8. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision.
9. This is a case where the judge observed that,

“The Respondent has not proved that the Appellant acted dishonestly, indeed he has not sought to do so. The refusal letter states that the Respondent is *not* satisfied that dishonesty had *not* been employed. According to the Respondent, either the Appellant failed to declare his full earnings to the Inland Revenue, or he falsely represented his earnings to UK Visas. As the evidence has turned out it appears more likely that the Appellant failed to declare his full earnings rather than falsely representing them to the UK Visas and Immigration when making his applications for leave” (paragraph 35).

10. In these circumstances, the Appellant did meet the suitability requirements and his refusal on general grounds was untenable.
11. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. As is agreed by all the parties before me, the Appellant satisfies the requirements of the Rules and that being so I am allowing this appeal.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

3<sup>rd</sup> August 2018

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I make a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

3<sup>rd</sup> August 2018