



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/06927/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1<sup>st</sup> March 2019**

**Decision &  
Promulgated**

**On 19<sup>th</sup> March 2019**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MOHAMMED IDREES  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Isherwood, Senior Home Office Presenting Officer

For the Respondent: Mr Hodgetts, Counsel instructed by Prime Law Solicitors Ltd

**DECISION AND REASONS**

1. Mr Idrees is a citizen of India whose date of birth is recorded as 7<sup>th</sup> November 1983. On 25<sup>th</sup> August 2017 he made application for indefinite leave to remain in the United Kingdom on the basis of ten years' lawful residence. On 27<sup>th</sup> February 2018 the Secretary of State refused the application relying on paragraph 322(5) of the Immigration Rules. It was the Secretary of State's position that the Appellant's conduct was such that he ought not to obtain the relief sought. It was the Secretary of State's position that the Appellant had used deception in the preparation of accounts upon which he had relied in earlier applications and that he

had only corrected the position when the Secretary of State had pointed out to him that on the basis of information he had received the accounts were wrong and importantly so far as the Secretary of State was concerned, there had been as I say deception or dishonesty.

2. Mr Idrees appealed and on 31<sup>st</sup> October 2018 his appeal was heard by Judge of the First-tier Tribunal Morgan sitting at Taylor House. Judge Morgan had the benefit of hearing from the Appellant. It is not in dispute that the Appellant relied on his witness statement dated 24<sup>th</sup> October 2018 which runs to 23 paragraphs. The Appellant in the First-tier Tribunal, Mr Idrees, was cross-examined and having heard the evidence and the submissions that were made Judge Morgan made important findings. At paragraph 9 it reads:

*“In the light of the submissions and the evidence outlined above I find that, contrary to the assertion in the refusal, the Appellant has not fabricated earnings for the purpose of gaining an immigration advantage. The earnings submitted to the Respondent were an accurate reflection of the Appellant’s total earnings from self-employment. Those earnings were accepted by the Respondent in both of the successful applications of 2011 and 2013 for further leave as a Tier 1 Migrant. Where the problem arose was because the Appellant’s former accountants did not submit accurate tax returns to HMRC. However, I am persuaded by Mr Biggs’ submission that the Respondent has not discharged the burden of demonstrating that this was because of the dishonest actions of the Appellant.”*

3. Judge Morgan went on to allow the appeal on human rights grounds such being the basis of course of the application.
4. Not content with that decision by Notice dated 16<sup>th</sup> November 2018 the Secretary of State made application for permission to appeal to the Upper Tribunal. Although the grounds are quite lengthy, Ms Isherwood accepts that in summary there are two bases of attack. The first is on the basis of the reasoning in cases such as **R (on the application of Khan) -v- Secretary of State for the Home Department (dishonesty, tax return, paragraph 322(5)) [2018] UKUT 00384 (IAC)**. The guidance in that line of cases is that it is not sufficient for an applicant simply to blame his or her accountant for an error in relation to an historical tax return, that is not the end of the matter. However, it is common ground that it is for the Secretary of State to discharge the legal burden establishing dishonesty. If an applicant does not take steps within a reasonable time to remedy the situation, the Secretary of State *may* be entitled to conclude that this failure justifies a conclusion that there has been deceit or dishonesty. Certainly, where there has been a significant difference in the figures submitted, there is a prima facie case. The evidential burden then is on the Appellant to offer an innocent explanation but the legal burden always stays with the Secretary of State.
5. The second ground upon which the Secretary of State relies is that it was said that there was inadequate reasoning on the part of the judge.

6. As to the first point of dishonesty, having read the judge's decision taken together with the witness statement, I come to the view that it was open to the judge to conclude that the Appellant had not been dishonest. When I say the Appellant, I mean the Appellant in the First-tier Tribunal. It may be that Mr Idrees had been careless but that does not equate necessarily with dishonesty.
7. As to the adequacy of reasoning, my preliminary view, having read paragraph 10 of the Decision and Reasons was that it was not clear what the "plausible explanation" was to which the judge referred. He says, "*I find that the Appellant had provided a plausible explanation for why there is an income differential between the declared income on his tax returns and that relied upon in the applications and the Respondent's evidence falls far short of establishing dishonesty*". However, the Decision and Reasons, in this case, have to be read together with the witness statement because clearly that was the evidence upon which the decision was made.
8. Before concluding I asked the parties whether there were any other matters which they felt I should deal with more fully both were content to leave matters as they were.
9. Ms Isherwood very realistically and reasonably in her submissions relied on the grounds without more.

### **Decision**

In the circumstances the appeal of the Secretary of State to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal is affirmed

No anonymity direction is made.

**Signed**

**Date: 18 March 2019**



**Deputy Upper Tribunal Judge Zucker**