



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

HU/06435/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons  
Promulgated

**On 17 December 2020**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

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

Appellant

and

**TARIQ MAHMUD SUHARTO**

Respondent

**DETERMINATION AND REASONS**

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.

2. The appellant is a citizen of Bangladesh, born on 25 January 1980. FtT Judge I F Taylor allowed his human rights appeal by a decision promulgated on 10 September 2019.
3. This decision is to be read also with:
  - i) The SSHD's grounds of appeal to the UT.
  - ii) The FtT's grant of permission, dated 27 January 2020.
  - iii) The UT's notes and directions issued on 20 April and on 23 June 2020.
  - iv) The response for the appellant, in the form of his statement, dated 17 July 2020.
  - v) My decision, dated 29 September and issued on 7 October 2020, finding error of law and seeking further submissions.
  - vi) The response from the appellant's solicitors, dated 15 October 2020, in favour of a remit to the FtT for a fresh hearing.
4. In terms of rules 2 and 34, it is now appropriate to complete the decision-making of the UT, without a hearing.
5. The decision of the FtT is set aside, and stands only as a record of what was said at the hearing. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the case is remitted to the FtT for a fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Taylor.
6. No anonymity direction has been requested or made.

H Macleman

UT Judge Macleman

7 December 2020

#### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the

appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email.**



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

HU/06435/19 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Issued on

Before .....

UPPER TRIBUNAL JUDGE MACLEMAN

Between

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

Appellant

and

**TARIQ MAHMUD SUHARTO**

Respondent

**DECISION ON ERROR OF LAW and FURTHER DIRECTIONS**

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.

2. The appellant is a citizen of Bangladesh, born on 25 January 1980. FtT Judge I F Taylor allowed his human rights appeal by a decision promulgated on 10 September 2019.
3. This decision is to be read also with:
  - i) The SSHD's grounds of appeal to the UT.
  - ii) The FtT's grant of permission, dated 27 January 2020.
  - iii) The UT's notes and directions issued on 20 April and on 23 June 2020.
  - iv) The response for the appellant, in the form of his statement, dated 17 July 2020.
4. In terms of rules 2 and 34, it is now appropriate to determine without a hearing whether the making of the decision of the FtT involved the making of an error on a point of law and, if so, whether it should be set aside.
5. The nub of the SSHD's grounds is that:

[1] the FtT found that the appellant correctly declared his income to HMRC, but that was inconsistent with subsequent payment of significant tax arrears on undeclared income; and

[2] if his income was as declared to HMRC, he could not have obtained leave under the immigration rules (based on higher declared income).
6. Those points are well taken. The judge appears to have accepted that the appellant wrongly declared his profits, as he said himself, but also found "nothing unusual" in his negligible returns. I am unable to find any reconciliation of those propositions in the FtT's explanation at [20].
7. The decision does not explain its finding the appellant honestly made different declarations to HMRC and to UKVI.
8. If profits were genuinely as low as originally declared, there is no scope for the appellant to have been "beguiled by accounting technicalities", and no reason for later amendment and payment of arrears and penalties.
9. The FtT erred in law, by making inconsistent findings, and by providing no legally adequate explanation for its conclusion that there was no dishonesty by the appellant (whether to HMRC, or to UKVI, or to both). The error is crucial to the decision, so it is **set aside**.

10. Parties are directed to make any submissions on further procedure within 14 days after this decision is sent out.
11. In absence of submissions to the contrary, the UT is likely to remit to the FtT for a fresh decision.
12. Any submissions are to be sent by, or attached to, an email to [email] using the appeal reference number (as at the top of these directions) as the subject line. Attachments must not exceed 15 MB. (This address is **not** generally available for the filing of documents.)
13. Service on the SSHD is to be made to [email].
14. The email address used by the appellant's representatives is [email], or as may be apparent from communications.
15. No anonymity direction has been requested or made.

H Macleman

UT Judge Macleman  
29 September 2020

#### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
  2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
  3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
  4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.

