



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07164/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House
On 11 December 2020

Decision & Reasons Promulgated
On 26 February 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AOUMKUMAR BHUPATKUMAR SIDAPARA
(anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Mr S Muquit, Counsel instructed by Westend Consultants UK Ltd

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant” refusing him leave to remain in the United Kingdom.
2. For the purpose of introduction, it is the Secretary of State’s case that the claimant was unsuitable for residence in the United Kingdom because he had been untruthful with the authorities. There were discrepancies between the money declared to HMRC for the purposes of assessing his tax liability and the money declared to the Secretary of State for the purpose of supporting applications for continuing leave.

3. The First-tier Tribunal Judge decided, having heard the evidence, that the Secretary of State had not shown the claimant to have been dishonest and allowed the appeal.
4. I have the grounds of appeal from the Secretary of State and a detailed Rule 24 reply from Mr Muquit which I have considered with the written and oral submissions before me.
5. Mr Whitwell began by distancing himself from ground 1 which said the First-tier Tribunal Judge had made a mistake about a material fact. The contention in ground 1 is that the claimant had inflated his income. If there was any fault it lay in underdeclaring income for the purposes of tax, not overclaiming for the purposes of pursuing an application for leave. Mr Whitwell described ground 1 as “slightly at cross-purposes”.
6. He concentrated on ground 2 which he said is a failure to give adequate reasons.
7. There are many cases that touch on scenarios such as this. The First-tier Tribunal, appropriately, directed itself to the decision in **Balajigari v SSHD [2019] EWCA Civ 673** and there is no suggestion that the First-tier Tribunal did other than direct itself appropriately and follow the directions given.
8. Mr Whitwell’s argument was that the judge had accepted an explanation for underdeclaring to HMRC without giving adequate reasons for the decision. As I am sure Mr Whitwell will accept the Secretary of State is on rather thin ice if she seeks to show that an explanation which has been given is inadequate in law. However, it is also right to say that such an explanation could be inadequate and I have taken Mr Whitwell’s submission entirely seriously. The fundamental problem, as the First-tier Tribunal Judge recognised, related particularly to a declaration in February 2011 where the sum of £4,334.09 was underdeclared. Some of this was attributed to overlooking a dividend receipt but there was still £2,112.09 unexplained.
9. It was the claimant’s case that he had declared the income through the company that paid the dividends. As the First-tier Tribunal Judge explained it is not for the claimant to decide how to declare income but for the claimant to declare the income in the way required. However, it is important that this is a case where the sum was not hidden away in secret books but were disclosed, albeit inappropriately. This is clearly pertinent to the issue of whether dishonesty was involved. The judge found the explanation for omitting the declaration of £2,222 to be sufficient to dispel the inference of dishonesty.
10. At paragraph 23 of his witness statement the claimant said that, in addition to wrongly declaring a sum he forgot about a “first dividend” of £2000 net. At paragraph 37 of the Decision and Reasons the judge found that the claimant had made tax declarations for two years without professional help and that it was “plausible” that he had made an innocent mistake.
11. In making this assessment the judge had regard to the claimant’s willingness to correct the error when it came to his attention and the fact that there is no known criticism of his conduct since 2011 concerning his tax affairs (or at all although that is not what I have to consider) and that he made the declaration with the benefit of advice.

12. I have considered Mr Whitwell's reference to the decision of Martin Spencer J in **R (Khan) v SSHD [2018] UKUT 384 (IAC)** particularly paragraphs 32 to 37 but these are illustrative rather than mandatory indications of the kind of requirements that can be expected. The simple point is that the judge believed the witness. That much is clear and he has set the finding against the background of the case having regard to the relatively small amount of money involved, the explanation given for not declaring it and the plausibility of that explanation, albeit wrong in law, with the apparently good payment record since and decided that dishonesty had not been proved.
13. This was clearly open to the judge and was a permissible conclusion.
14. In short, whilst the decision might seem generous to someone who has not heard the claimant it is neither unexplained nor perverse.
15. There is no material error of law established and I dismiss the Secretary of State's appeal.

Notice of Decision

The Secretary of State's appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 February 2021