



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

Appeal Number HU/03292/2018

THE IMMIGRATION ACTS

Heard at Field House
On 17th December 2018

Decision and Reasons Promulgated
On 15th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MUHAMMAD ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Singer (counsel, instructed by Morgan Mark Solicitors)

For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application to remain in the UK on the basis of long residence was refused. The Appellant's appeal was dismissed by First-tier Tribunal Judge Ripley in the decision promulgated on the 3rd of September 2018. In paragraph 18 of the decision the Judge rejected the Appellant's explanation for the errors in his tax returns but went on to find that the circumstances did not justify a refusal under paragraph 320(5) of the Immigration Rules.

2. The Secretary of State sought permission to appeal relying on the case of Abassi and Samant that the position of HMRC was not relevant to the decision that had to be made as there may be factors that influenced the position of HMRC which were not in evidence. The absence of a penalty notice was neither here nor there. The contents of a tax return were the responsibility of the Appellant. Permission was granted by the First-tier Tribunal.
3. The Appellant cross-appealed on the grounds that the Judge had not properly directed himself on the burden and standard of proof where deception is alleged and in failing to make clear findings in relation to the Appellant's dishonesty, permission was granted by the Upper Tribunal.
4. The hearing of the 2 appeals was short as it was accepted that there were errors demonstrated on both sets of grounds and that the appeal would have to be remitted to the First-tier Tribunal for re-hearing with no findings preserved.
5. The Appellant is right to observe that the Judge made no reference to the burden and standard of proof in cases where the Secretary of State alleges dishonesty/ deception. The burden in those circumstances is on the Secretary of State, the standard of proof is the balance of probabilities but cogent evidence is required to justify such a finding which should not be made lightly having regard to the potential consequences for an individual. The failure to acknowledge the shift in the burden is significant as it suggests that the Judge had not focussed properly on the allegation made and failed to address the Appellant's actual level of culpability.
6. That compounds the errors made in the decision itself in which the Judge placed undue emphasis on the role and attitude of HMRC when there was no evidence on which any inferences could be drawn. In rejecting the Appellant's explanation for the errors that had arisen in his tax returns the Judge had not given weight to the Appellant's responsibility for the errors made and had not made a clear finding on whether the Appellant had been dishonest or not in filing the returns actually submitted.
7. Both parties are entitled to have their respective cases fully analysed in line with the relevant principles and for clear sustainable findings to be made on the appropriate legal footing. The errors are such that it would not be appropriate for the decision to be re-made in the Upper Tribunal and accordingly the decision is set aside and remitted to be heard by a different Judge.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to re-hearing with no findings preserved, not to be heard by First-tier Tribunal Judge Ripley.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no direction.

Fee Award

I make no fee order which remains a matter for the First-tier Tribunal at the conclusion of the remitted hearing.

A handwritten signature in black ink, appearing to read 'M Parkes'. The signature is written in a cursive style with a large initial 'M'.

Signed:
Deputy Judge of the Upper Tribunal (IAC)
Dated: 27th December 2018