



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

Appeal Number: HU/02898/2019

THE IMMIGRATION ACTS

Heard at Field House

On 26 February 2020

**Decision & Reasons
Promulgated
On 20 April 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**SURESH REDDY GARAKURTHI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Bagral, Counsel instructed by Ellisons Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 31 January 2018 the appellant, a citizen of India, applied for leave to remain in the UK under Paragraph 276B of the Immigration Rules, having accrued 10 years of lawful continuous residence. On 29 January 2019 the application was refused on the basis that in two previous applications for leave to remain (made in 2011 and 2013) the appellant had provided information about his earnings that was inconsistent, to a significant extent, with information provided to HMRC. The respondent reached the view that the appellant had been dishonest and on that basis refused his

application under paras. 276B(ii)(c), 276B(iii) and 322(5) of the Immigration Rules.

2. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Beg. In a decision promulgated on 29 May 2019 the judge dismissed the appeal. The judge found that the appellant had been dishonest by intentionally submitting false earnings information to the respondent and she agreed with the respondent that Paragraph 322(5) of the Immigration Rules was applicable. Paragraph 322(5) provides that leave to remain should normally be refused in circumstances where:

“the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security”

3. Having considered the grounds of appeal and submissions by Ms Bagral and Mr Melvin I find that the decision of the First-tier Tribunal is not sustainable because the judge appears to have either misconstrued, or failed to engage with, a material part of the appellant’s case.
4. One of the arguments made by the appellant was that although he did not file a self-assessment tax return in the 2010/11 tax year, his income was declared in a corporation tax return filed in 2012 and he paid the correct amount of tax, such that when the position was later corrected in 2015 it was confirmed that no further tax was due for the 2010/11 tax year.
5. At paragraph 20 the judge stated:

“It is common ground that the appellant failed to declare his total income for the years 2010 and 2011 and therefore failed to pay the correct tax due and used those accounts to support applications for leave to remain. Furthermore, the appellant failed to submit a company tax return for the period ending November 2011 in 2012.”
6. Paragraph 20 contains two mistakes that indicate that the judge failed to appreciate that it was the appellant’s claim that in the 2010/11 tax year the correct tax was paid and that his income was correctly declared in a corporation tax form. The first is that judge stated that it was “common ground” that the appellant failed to pay the correct tax in the 2010/11 tax year when, as is clear from Ms Bagral’s skeleton argument in the First-tier Tribunal, it was a part of the appellant’s claim that he paid the correct tax.
7. The second mistake in paragraph 20 is that the judge stated that the appellant did not submit a company tax return for the period ending November 2011 when in fact he did. This was included at page 103 of the appellant’s bundle and is referred to in Ms Bagral’s First-tier Tribunal skeleton argument.

8. Mr Melvin argued that even if these mistakes amount to an error of law, the error is not material because the judge made adverse credibility findings that have not been challenged and which are sufficient to justify the conclusion reached about the appellant being dishonest. Whilst I agree with Mr Melvin that the judge made several sustainable negative credibility findings, the error I have identified is material because it indicates that the judge decided the case under the misapprehension that the appellant accepted that the correct tax was not paid and that he did not accurately declare his income to HMRC in 2010/11 when in fact it was the appellant's case that the correct amount of tax was paid and his income was declared in his corporation tax filing.
9. In the light of this material error of law the decision of the First tier Tribunal cannot stand and will need to be remade in its entirety. It is not necessary to address the other grounds of appeal.
10. Given that the error of law identified above relates to the findings of fact, the appeal will need to be considered afresh with no findings preserved. Having regard to para. 7.2(b) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal, I have decided that the appeal should be remitted to the First-tier Tribunal.

Notice of Decision

1. The appeal is allowed.
2. The decision of the First-tier Tribunal contains an error on a point of law and is set aside.
3. The appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge.

Signed

A handwritten signature in black ink, appearing to be 'SU', is written over a rectangular box that serves as a placeholder for a printed name or title.

Upper Tribunal Judge Sheridan

Dated: 24 March 2020