



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/08470/2018

**THE IMMIGRATION ACTS**

Heard at Birmingham Civil Justice Centre  
On 20 August 2019

Decision & Reasons Promulgated  
On 9 October 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD NOUMAN KHALID  
(anonymity direction not made)

Respondent

**Representation:**

For the Appellant: Ms H Aboni, Senior Home Office Presenting Officer

For the Respondent: Mr R Ahmed, Counsel instructed by Fawad Law, Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing on human rights grounds an appeal against a decision of the Secretary of State refusing the respondent, hereinafter "the claimant", leave to remain on human rights grounds.
2. The Secretary of State's refusal letter is dated 26 March 2018. This shows that the claimant entered the United Kingdom in October 2005 with entry clearance as a student and that his leave was extended by stages in different capacities until June

2016. On 3 November 2015 he applied for indefinite leave to remain on the basis of ten years' lawful residence but the application was refused. The claimant initiated an appeal against that decision but then withdrew the appeal. On 28 June 2016, shortly before he withdrew his appeal, he made a further application for indefinite leave to remain on the basis of ten years' residence. His application was unsuccessful because, in the opinion of the Secretary of State, it did not amount to a fresh claim. The decision was made with reference to paragraph 353 of HC 395. The remedy against that decision lay in judicial review. Proceedings were started and then resolved by way of a consent order so that the decision was reconsidered. It is that reconsidered decision on 26 March that led to this appeal.

3. The Secretary of State found that the claimant satisfied the Rules relating, for example, to his knowledge of the English language and life in the United Kingdom but the application was refused with reference to paragraph 276B(ii) and (iii). The Secretary of State found that it was not in the public interest to grant him indefinite leave because it would be undesirable and because the application fell for refusal under the general grounds of refusal. There were inconsistencies between sums of money declared to the Secretary of State for the purpose of immigration applications and to HMRC for the purposes of paying tax. With respect, the First-tier Tribunal set out the problem particularly clearly at paragraphs 2 and 3 of the decision where the judge said:

"2. His application was refused on March 26, 2018 because the respondent was satisfied that his character and conduct, in misleading another government department, would lead to the undesirability of permitting him to remain in the UK. In June 2013, he made an application for further leave to remain as a Tier 1 (General) Migrant which was granted until June 2016. In that application, he declared an earned income of £18,967.29 from Boots, which is not disputed and self-employed income of £17,450, totalling £36,417.29 to represent the required 35 out of 80 points from previous earnings as required under the Rules. In November 2015 he applied for indefinite leave to remain on the grounds of long residence. As part of the consideration of his application enquiries were made at HMRC to cover the period 2010 - 11 and 2012 - 13. The records from HMRC revealed his self-employed income to be a turnover of £2,525 and a net profit of £515 for 2011 - 12 and a turnover of £5,089 and net profit of £830 in 2012 - 13. He was interviewed in November 2015 but could give no reasonable explanation of the discrepancies and so his application was refused. The appellant lodged a notice of appeal against that decision on February 2<sup>nd</sup>, 2016.

3. After the refusal in November 2015, the appellant lodged an amended tax return to HMRC to show that he had earned more in the relevant years from self-employment and on June 28<sup>th</sup>, 2016 he lodged his application, with the new tax records after withdrawing the previous appeal on June 27<sup>th</sup>, 2016. The respondent noted that in interview the appellant said that the discrepancies were down to accounting errors and that he did not check the tax return online as he relied upon professionals to do so. The respondent did not accept that explanation given the scale of the discrepancy and the fact that it is the appellant's responsibility to ensure that the tax return is completed correctly. The respondent considered that, the withdrawal of the first appeal was an attempt not to have the difference in earnings originally declared to HMRC

considered by the Tribunal on the basis that the Tribunal may find in the respondent's favour and the submission of the recent application of the amended records would be successful on the basis that HMRC had not imposed a sanction for the amended tax records."

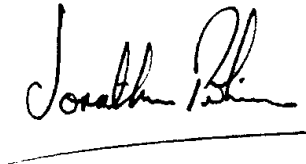
4. The judge noted at paragraph 28 that it was not the Secretary of State's case that she had been deceived. The false information was given to the Revenue.
5. The First-tier Tribunal did not have the benefit of the decision of the Court of Appeal in **Balajigari and Others v SSHD** [2019] EWCA Civ 673 because this was not promulgated until 16 April 2019 but as far as I can see the First-tier Tribunal followed the approach required there in all material particulars. The judge clearly understood that the discrepancy was big enough to attract attention and then went on to make an evaluative assessment of the claimant's credibility having regard to his own evidence, the explanation for the inconsistencies, such as it was, and the attitude of HMRC which was to not to impose any penalty still less initiate prosecution.
6. Mr Ahmed, for the claimant, had one point and he stuck to it very firmly. He said the decision of the First-tier Tribunal was permissible. The point is potentially a good one. I cannot interfere with it unless it can be shown to be wrong in law.
7. The Secretary of State's grounds expressed surprise at the decision and noted that it was the Tribunal's own finding that the claimant only rectified the situation after the error had been drawn to his attention by the Home Office. The grounds took exception to the judge's finding that the claimant "just did not declare that amount to HMRC and pay the appropriate level of tax". The grounds described this as a wilful failure to pay the appropriate level of tax obliged.
8. I have reflected very carefully on this. I am prepared to say that, based on my reading of the papers, I find the decision surprising but, unlike the First-tier Tribunal Judge, I did not have the benefit of hearing from the claimant. He had no real explanation for the inconsistencies except claiming to have relied upon someone he thought he could trust. He said that he had no reason to doubt the accuracy of the record until challenged by the Secretary of State and so I do not see any additional point to be made by his not correcting it until drawn to his attention there. That was as consistent with his case, namely that he was unaware of the error, as it is with being dishonest and regretting it.
9. The judge clearly gave considerable weight to the attitude of HMRC but she was entitled to do that and I have concluded that the Secretary of State's objections both in the grounds and the amplification by Ms Aboni are, properly understood, no more than protests against findings of fact that the Secretary of State does not like.
10. In dismissing the Secretary of State's appeal I do not wish to give any kind of any indication that person's whose declared income to the Revenue and declared income to the Secretary of State are very different should assume that their explanation of innocence will be accepted. This decision goes no further than its own particular facts. I am not persuaded that the judge misdirected herself or was perverse in

believing the evidence that was given on that occasion and for that reason I dismissed the Secretary of State's appeal.

**Notice of Decision**

11. The Secretary of State's appeal against the decision of the First-tier Tribunal is dismissed.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read "Jonathan Perkins", written over a horizontal line.

Dated 8 October 2019