



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: IA 04818-13

**THE IMMIGRATION ACTS**

At **Field House**  
on **22.11.2013**

Decision signed: **22.11.2013**  
sent out: **27.11.2013**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**SARFRAZ AHMAD**

appellant

and

**Secretary of State for the Home Department**

respondent

Representation:

For the appellant: Miss A Khan  
For the respondent: Mr P Deller

**DETERMINATION AND REASONS**

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Fiona Kempton), sitting at Hatton Cross on 23 July, to dismiss a tier 1 general migrant appeal by a citizen of Pakistan, born 11 June 1977. The judge had dismissed the appeal, both on the general ground for the decision (paragraph 322 (1A): false documents submitted), and the substantive one (paragraph 245C (b) (c): previous earnings not shown).

2. The main evidence relied on by the presenting officer before the judge had been a witness statement by Catherine McGovern of HM Revenue and Customs. The second page named, 'Megan Employment Solutions', as one of a number of firms for whom no Revenue records "... demonstrated that they had taken part in any legitimate trade". Unfortunately the

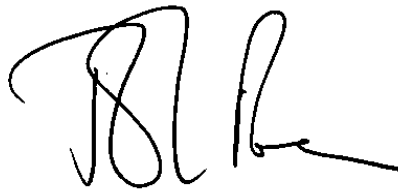
second page had not appeared in the Home Office bundle before the judge, no doubt because that had been copied one-sided; and the judge refused the presenting officer permission to put in the full version.

3. Even so, the judge ruled that the application had been rightly refused under paragraph 322 (1A); but only by reference to the evidence, or lack of it, adduced by the appellant himself: as the Upper Tribunal permission judge pointed out, this effectively reversed the burden of proof, which lay on the Home Office on this point. Mr Deller conceded that the judge's decision on this point could not be supported on the material before her.
4. On the substantive ground, the burden of proof of course lay on the appellant, and, though the judge's decision on this point was not challenged in the grounds of appeal to this Tribunal, its correctness or otherwise remained a live issue before me. The letters from the Revenue produced by the appellant (paragraphs 56 – 63 of his bundle before the judge), apparently confirming payment of tax by him through PAYE in the course of his employment with Megan, needed to be tested against what Miss McGovern had said in her witness statement. However the judge had disabled herself from doing so by refusing to admit a full copy of the statement.
5. I ruled that the decision on this substantive point would need to be re-made: if the appellant had been able to produce documentary evidence there and then that he had actually received the money as he claimed from Megan, that might have settled it there and then. However, he claimed, through Miss Khan, that, despite the size of the sums involved, amounting to over £60,000 in 2010 – 11, he had been paid in cash. He offered to produce evidence of cash transfers he had made from the proceeds; but this was not in the bundle which had been filed and served, and was clearly going to require further detailed investigation.
6. Another item of evidence which was also going to require further investigation was Miss McGovern's statement itself. Mr Deller helpfully drew my attention to what had been said, not only about this very statement, but about its reference to Megan, by Michael Kent QC, sitting as a deputy judge of the High Court, in *Zubair* [2013] EWHC (Admin) 1824. The deputy judge had reached conclusions about the statement at paragraphs 52 – 58, which resulted in his quashing the decision to curtail the claimant's leave, which had been based on a similar paragraph 322 (1A) point to that relied on in this case. However, it should be clearly understood that what the deputy judge said about the statement applied in that context only, and there is nothing in his decision to suggest that he intended to rule out its use in deciding appeals on substantive grounds, where the burden of proof is on the appellant.
7. Nevertheless, it would clearly be in the public interest for the Revenue, through Miss McGovern or any other responsible person, to clarify exactly what evidence her statement had been based on, so that judges, especially those of the First-tier Tribunal (Immigration and Asylum Chamber) could in future have a clear idea of how far they could rely on it. So there will be a fresh hearing, on the substantive paragraph 245C ground only, before another first-tier judge, for which both the appellant and the Home Office will be free to

file and serve any further evidence they wish to show whether or not the appellant's claimed employment with Megan was genuine or not.

**Appeal against paragraph 322 (1A) decision allowed by consent**

**Appeal against paragraph 245C decision allowed: decision to be re-made after hearing in First-tier Tribunal at Hatton Cross, not before Judge Kempton**

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)