



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04004/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18 December 2018

Decision & Reasons Promulgated
On 15 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR QUADRI
(NO ANONYMITY ORDER MADE OR REQUESTED)

Respondent

Representation:

For the Appellant: Ms Cunha, Senior Home Office Presenting Officer

For the Respondent: Mr Saini, instructed by Vision Solicitors

DECISION AND REASONS

The appellant and proceedings

1. The appellant Secretary of State was the respondent before the First-tier Tribunal and for ease of reference I refer to the parties as they were then. The appeal is brought with permission granted by the First-tier tribunal.
2. Ms Cunha submitted that the judge had perversely reached the conclusion that the discrepancy in the records that the appellant gave about earnings to UK VI, to make

out his claim under the immigration rules, and those given to HMRC in respect of his tax liabilities, did not establish on the balance of probabilities that he had been deceitful or dishonest towards HMRC, and so justifying a decision that his character and conduct meant that he was undesirable and so should not be granted leave that he was otherwise entitled to.

3. First, the judge was wrong to place any weight on the fact that his accountant had taken responsibility for the error because it has often been noted that an applicant must take responsibility for his own tax affairs because not only would he have supplied the figures to his accountant he would have checked them and would have individually received a tax bill see R (on the application of Samant) v SSHD [2017] UKAITUR JR/6546/2018).
4. I find no merit in this ground not least because the evidence from the accountant was not contested at the hearing before the judge, and it was not submitted to the judge that it was evidence which was incapable of providing a plausible explanation for the error on the tax return. Although there are unattractive aspects to that evidence they were not relied upon before the judge as having any significance. It is not for the judge to make out the respondent's case.
5. Second, the judge was wrong to find it significant that HMRC did not consider the matter to be one which warranted a penalty or reference to the police, in the case of Abbasi JR/13807/2016 the fact that HMRC had 'not yet seen fit to issue a penalty notice' was neither here nor there.
6. I find no merit in this ground because this case is not on all fours with the position in Abbasi because here the HMRC had investigated and reached a decision that the act was culpably careless but not a deliberate deception, so that this was not a "not yet" position. Further as the quote in the grounds shows what the court went on to say was that what HMRC does or does not do is not necessarily relevant to actions by the Secretary of State, to the point that they are not necessarily irrelevant, and consideration of the position does not show misdirection or perversity. Further this is not a case where in any event the position of HMRC was determinative but merely part of the factual matrix.
7. There is an additional difficulty with these first two grounds reliance on JR proceedings because in JR proceedings the context and the burden are entirely different. There the respondent only need show rationality in attributing a causal nexus between the act and the deception. The judge in this statutory appeal was deciding whether in fact there had been deception practised on HMRC as the respondent argued, and the burden is on the respondent.
8. Third the judge misdirected himself at [12] in his approach to engagement of paragraph 322(5) of the rules, limiting engagement to matters of convictions and national security, failing to appreciate that tax evasion can constitute sufficient to meet the standard of culpable conduct making it undesirable to grant the person leave.

9. I find no merit here because the ground oversimplifies what the judge says at [12] so that the overall effect is mischaracterised. The judge was entitled to note that the appellant had not been found guilty of any offence or been reported for consideration of any offence and that he is not a threat to national security, not just because those are uncontested facts, but because those are both categories which engage 322(5) and the judge is plainly simply referring to them to explain that those categories are not engaged. The judge goes on to say that “on the available evidence I cannot be satisfied that the appellant has been dishonest or deceitful as alleged and I cannot be satisfied that he has demonstrated that his remaining in the UK would be undesirable under paragraph 322 (5).” Ignoring the irrelevant typographical errors plainly what the judge is considering here is the evidence of tax evasion as a factor or ground for engagement beyond convictions and national security so that a fair reading makes it plain that he is not limiting engagement as these grounds suggests.

Decision

10. The appellant has failed to show that the decision is marred by legal error and the decision allowing the appeal stands.

A handwritten signature in black ink, appearing to read 'E. Davidge', with a vertical line to its left.

Signed

Date 18 December 2018

Deputy Upper Tribunal Judge Davidge