



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/04030/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6<sup>th</sup> March 2019

Decision & Reasons Promulgated  
On 20<sup>th</sup> March 2019

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL  
G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MUHAMMAD USMAN FAROOQ  
NO ANONYMITY ORDER MADE

Claimant

**Representation:**

For the Appellant: Mr S Whitwell (Home Office Presenting Officer)  
For the Respondent: Mr M Symes (Counsel)

**DECISION AND REASONS**

1. This is an error of law hearing. The SSHD is the appellant in this matter. He appeals against the decision of the First Tier Tribunal (Judge JJ Callow) (FtT) promulgated on 4<sup>th</sup> December 2018 in which the Claimant's appeal on human rights grounds was allowed.

## Background

2. The Claimant is a citizen of Pakistan. His appeal in respect of his application for leave to remain in the UK on the basis of 10 years continuous residence was allowed by the FtT under paragraph 276B Immigration Rules. It was contended by the SSHD that his conduct and character were undesirable under paragraph 322(5) Immigration rules, because in a previous application for Tier 1 general leave he had been awarded 20 points for his earnings. The SSHD considered that the Claimant had misrepresented his income and underpaid income tax for the tax year 2013 in order to obtain leave to remain.

## Grounds of appeal

3. In grounds of appeal the SSHD argued that the FtT erred in absolving the Claimant of any blame for his failure to correctly declare his self employed income to HMRC; the assessment by the FtT was flawed.
4. The FtT failed to follow the guidance at headnote (v) in **R (on the application of Khan)** v SSHD (Dishonesty, tax return, paragraph 322(5)) [2018] UKUT 00384 (IAC), when assessing whether the Claimant's actions could be viewed as dishonest. The FtT did not provide reasons for why the Claimant would not have been aware of the error in his tax return sooner given that his tax liability would have been lower than expected. The SSHD was entitled to draw inference that the Claimant had been deceitful.

## Permission to appeal

5. Permission to appeal to the Upper Tribunal (UT) was granted by Deputy UTJ Davey on 28.1.2019. In granting permission the DUTJ considered that it was arguable that the FtT erred in not following the approach set out in Khan [2018] UKUT 384 and in failing to give reasons. The SSHD will need to address materiality.

## Rule 24 response

6. Mr Symes produced a response opposing the grounds of appeal. The Claimant had provided an amended tax return and paid the outstanding amount. He had acted carelessly and had left matters to his financial advisors during a time when he was visiting his sick mother in Pakistan. There was evidence from his accountants confirming that in January 2016 an error in the self assessment for 2013 was detected. The FtT found that the SSHD failed to discharge the burden to show that the Claimant was dishonest. Paragraphs 11-14 deal with the issues under **Khan**.

## Submissions

7. At the hearing before me Mr Whitwell representing the SSHD argued that the FtT had not fully applied or considered the detailed guidance in **Khan** with reference to the headnote at (i), (iv) (v) & (vi). The difference in the amount owed was significant; between £38,000 and £9,000 and which ought to have resulted in the Claimant taking

personal responsibility at the time the return was submitted or acted sooner to rectify the position.

8. In response Mr Symes submitted that the FtT had more than adequately disposed of the issues in the appeal in [9] and which had effectively covered the matters highlighted in **Khan**. The Claimant produced a detailed witness statement in addition to oral evidence and was found to be credible by the FtT. Mr Symes was not willing to concede that the judgment in **Khan** was handed down in time for it to have been relied on.

### **Discussion and conclusion**

9. I found no material error in law. Whilst it is clear that the FtT made no specific reference to **Khan**, it is equally clear that the decision had not been before the FtT in any event, and did not appear to have been relied on by the representative for the Home Office at the First - tier Tribunal hearing. Having considered the headnote points set out in **Khan** I am satisfied that the FtT considered in substance all of the material issues raised and I accept the arguments as set out in paragraphs 11 - 14 of the Rule 24 response. The FtT had the opportunity to hear evidence from the Claimant and to assess the same in addition to his detailed witness statement at paragraph 49. He was found to be a credible witness and the FtT found that there was no dishonesty. The FtT was entitled to reach those findings on the evidence before it. The FtT had regard to the fact that the Claimant repaid the outstanding tax within a few months of realisation that it was outstanding. The FtT accepted his explanation that his accountants were at fault and found this to be a plausible explanation. The FtT found that there was no significant delay in addressing the tax discrepancy it having been brought to his attention in January 2016 by new accountants. Although not specifically set out as a self direction I find no error on the part of the FtT in its approach to the burden of proof in this matter [9].

### **Decision**

10. There is no material error of law disclosed in the decision. The appeal by the SSHD is dismissed. The Claimant's appeal is allowed on human rights grounds

Signed

Date 14.3.2019

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 14.3. 2019

GA Black

Deputy Judge of the Upper Tribunal