



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11668/2018**

THE IMMIGRATION ACTS

**Heard remotely at Field House
By Microsoft Teams
On 17 September 2021**

**Decision & Reasons Promulgated
On 23 September 2021**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MR MUHAMMAD JAMIL
MRS HABIBA U MAY
(ANONYMITY ORDER NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Malik Q.C, Counsel instructed by Irvine Thanvi Natas
Solicitors

For the Respondent: Mr Walker, Senior Home Office Presenting Officer

**DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Carey sent on 17 November 2020.
2. Both parties agreed that the decision of the First-tier Tribunal involved the making of an error of law. At [88] the judge made a

clear finding that the information that the first appellant provided to the respondent was inaccurate given his much lower profit for the adjacent tax years. It is agreed that this finding is unsustainable in light of the evidence submitted by the appellant to the respondent in support of his self-employed earnings for the tax years 2010 to 2011 and 2012 to 2013. Evidence of bank statements, invoices, accounts, letters from clients was before the respondent and accepted by the respondent to be genuine as noted in the Secretary of State's internal case notes which were also produced to the judge. The judge did not take any of this material evidence into account when making the above finding. This is a clear error of law and the judge's finding manifestly fed into his view of the appellant's character.

3. Similarly, when making a finding that the appellant dishonestly misled the tax authorities, the judge failed to take into account further material evidence of the appellant's business in Pakistan which had made losses. This evidence was at Annex F of the bundle. There is no reference to this evidence in the decision. The failure to take this evidence into account is also a clear error of law and the two errors are material to the issue of whether the appellant was dishonest.
4. There is a further error in the approach to paragraph 322(5) in that the judge having found the appellant to be dishonest failed to consider other circumstances about the appellant including positive features of his character to determine whether his presence in the UK is undesirable. The judge did not carry out a balancing exercise when deciding whether 322(5) applied and failed to take into account "positive evidence" including supportive letters and references as well as the appellant's contribution to society. An evaluation as part of the Article 8 ECHR proportionality exercise was not sufficient. The balancing exercise should have taken place in the context of 322(5) of the immigration rules.
5. In respect of disposal, I am mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. This appeal has already been heard by the First-tier Tribunal on two occasions, nevertheless it is not the appellant's fault that the decisions have been set aside because of errors of law and there are a considerable number of factual findings to be made. I am satisfied that the appropriate course of action, given these circumstances, is to remit the appeal to the First-tier Tribunal.
6. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

Notice of Decision

7. The decision of the First-tier Tribunal involved the making of an error of law.
8. The decision of the First-tier Tribunal is set aside, and the findings of the First-tier Tribunal are set aside in their entirety.
9. The appeal is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge Cary.

Signed

Date: 21 September 2021

R J Owens
Upper Tribunal Judge Owens