



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/17896/2012

THE IMMIGRATION ACTS

Heard at North Shields
On 6th September, 2013

Determination Promulgated
On 22nd October, 2013

Before

Upper Tribunal Judge Chalkley

Between

FOYZUL MIAH
(No anonymity order made)

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Miss Rebecca Pickering instructed by David Gray, Solicitors
For the Respondent: Mr Clive Dewison, Home Office Presenting Officer

It is, therefore, always necessary in cases involving the ability of a parent to adequately maintain an appellant in an appeal under paragraph 297 to bear in mind that the maintenance requirement does not cease on the child attaining the age of majority and, depending on the appellant's personal circumstances, it may continue for sometime beyond an appellant's eighteenth birthday and that as the Tribunal is concerned only with the circumstances appertaining as at the date of the decision

under challenge, it is improbable that any evidence of the child's future potential earnings will be more than speculative and so unlikely to be capable of being taken into account.

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh, who was born on 2nd November, 1984. He made application to the Entry Clearance Officer Dhaka, for leave to enter and settle in the United Kingdom as the child of parent settled there, under paragraph 297 of Statement of Changes in Immigration Rules, HC 395, as amended (“the Immigration Rules”).
2. The appellant is the son of Janu Begum (“the sponsor”) who has indefinite leave to remain in the United Kingdom. The respondent refused the appellant’s application in a Notice of Decision dated 9th August, 2012.
3. The respondent refused the application, suggesting that the appellant had failed to meet the requirements of paragraph 297(i)(d) and (e) of the Immigration Rules, as well as failing to meet the requirements of paragraph 297(v).
4. The appellant appealed and his appeal was heard by First-tier Tribunal Judge Mozolowski, who, in a determination dated 22nd April, 2003, found that the appellant was the son of the sponsor. She also accepted that the appellant was under the age of 18 years at the date of the application and currently lives with his oldest married sister. She found that the appellant's father was dead and the appellant did, therefore, meet paragraph 297(i)(d) and (e).
5. In relation to the requirements of paragraph 297(v), the judge noted that appellant was required to be maintained adequately by the parent without recourse to public funds. She found that the sponsor was not earning sufficient to maintain the appellant, because she was only earning £100 a week. That was below the relevant income support level. She noted that a job had been offered to the appellant by a Mr Choudhury, the owner of a company running several restaurants. The judge found that that job offer was not a genuine offer, because she did not accept the evidence of Mr Choudhury that at material all times there was always a low level job, such as being a dishwasher, available to the appellant. Neither did she accept Mr Choudhury’s contention that it was very difficult to fill such jobs from amongst the local population. The judge dismissed the appeal.
6. The grounds of appeal suggested that the judge had erred in law by failing to take into account the sponsor's savings, amounting to some £3,800. Reliance was placed on the decision in *Jahangara Begum and Others (Maintenance – savings) Bangladesh* [2012] UKUT 246 (IAC) for the proposition that any shortfall in income of the sponsor, could be made up by any savings the sponsor had. It was suggested that

the judge had also erred in failing to take account of the job offer made to the appellant and suggested that it was ultimately for Mr Choudhury who he wished to employ in his business and his motivation, either financial, or benevolent, were not relevant, so long as an offer of work genuinely existed for the appellant.

7. Miss Pickering pointed out that at the date of the hearing before the First-tier Tribunal Judge, the evidence showed that at the date of the Entry Clearance Officer's decision, the sponsor actually had savings of £3,400, rather than the £3800 suggested in the grounds of appeal. The sponsor's earnings fell short of the relevant income support level at the date of the Entry Clearance Officer's decision by £53.39 per week which meant, Miss Pickering submitted, that the sponsor's savings would be adequate to cover the shortfall in appellant's maintenance for a period of 71 weeks.
8. Counsel urged me to note that although the Entry Clearance Officer's decision was taken on 9th August, 2012, the appellant celebrated his 18th birthday on 2nd November, 2012. She suggested that the judge was also wrong in what she had said about the offer of employment. Third party support was, Miss Pickering suggested, available to the appellant and the issue for the judge was not *whether the job had been created for the sake of it*, but rather *whether an offer of work genuinely existed for the appellant*.
9. Mr Dewison asked me to find that the decision in *Begum* did not apply to this appeal. The decision in *Begum* had, he pointed out, been in relation to a marriage settlement appeal, where the grant of the visa was for a fixed, temporary period of two years. Here, the grant is for indefinite leave. What was to happen after the period of 71 weeks? How would that appellant then be maintained? Mr Dewison submitted that it is not the case, as alluded to by counsel that it was only necessary for it to be shown that the appellant could be adequately maintained until he was 18 years of age. So far as the job offer is concerned, the judge found that it was not a genuine offer in any event.
10. Miss Pickering said that it was speculative as to what might happen once the sponsor's savings had been expended. It was wrong to assume, however, that the appellant would seek to rely on the State. The appellant would, in any event, have been over the age of 18 long before the savings were expended on his maintenance and would no longer be a child.
11. I reserved my decision.
12. I do not believe that the decision of the Tribunal in *Begum* does assist me. Paragraph 297 of the Immigration Rules provides as follows:

“Requirements for indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom

297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

(a) both parents are present and settled in the United Kingdom; or

(b) both parents are being admitted on the same occasion for settlement; or

(c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or

(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or

(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or

(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) **can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds;** and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal." [My emphasis]

13. It is clear that paragraph 297 relates to children who are under the age of 18 years. Subparagraph (v) is also clear; it does not preclude third party support (*see Mahad* [2009] UKSC 16). However, the scenario in this appeal is not that the appellant will be maintained by a third party; rather that he will be maintaining himself through his own earnings. That is not permitted by paragraph 297 (v).
14. The sponsor's income at the date of the Entry Clearance Officer's decision fell short of the income support level (the yardstick minimum level of adequacy (*see KA and*

Others (Adequacy of maintenance) Pakistan [2006] UKAIT 00065) by £53.39 per week. The evidence before the judge was that as at the date of the Entry Clearance Officer's decision, the sponsor held some £3,400 in her bank account in the form of savings. Given that the sponsor's income fell short of the income support level by £53.39 per week, I find that the judge did err, by failing to take into account the fact that the appellant could be adequately maintained for in excess of 70 weeks if the sponsor were to utilise her savings.

15. The question then arises, for how long is a parent expected to adequately maintain the child under Paragraph 297?
16. It was suggested by counsel that since the Rule is itself concerned with children, the obligation of the parent to adequately maintain the child, must end with the child's maturity. I do not believe that can be correct.
17. It cannot have been the intention of Parliament that a parent should adequately maintain a child only until the child becomes an adult, any more than it can properly be said to be the case that a parent is required to demonstrate that they will be in a position to maintain a child into the child's adulthood, indefinitely.
18. I believe, that given the child is being admitted for indefinite leave, it is necessary to consider all the facts and the appellant's circumstances and to decide what would be a reasonable time to expect the appellant's parent to need to be able to adequately maintain the appellant.
19. In the case of a child who is over the age where attendance at school is compulsory, it will be relevant to consider what marketable skills (if any) a child might have to offer to a prospective employee. Given that there are, sadly, large numbers of graduates in the United Kingdom who are unable to obtain anything other than menial employment in the current economic climate, if they are able to obtain any employment at all, someone who has no particular skills to offer in the employment market may need to be supported for a longer period on their admission to the United Kingdom, to enable them to attend courses to acquire suitable skills, than someone who already has a trade or profession. An appellant who cannot speak any English is likely to be at an added disadvantage and will need to be supported for a longer time, because it is more likely than not that in order to acquire the skills an employer will be looking for, they will at least have to learn to speak and understand English, even if they will not necessarily need to be able to read and write English.
20. In the case of a child under the age where attendance at school is compulsory, it will still be necessary to consider all the facts and the appellant's particular circumstances. The appellant's previous education, their language skills and ability to thrive and progress their education in school in the United Kingdom after arrival may be relevant, as will the appellant's prospects of entering into further or higher education: the nearer a child is to approaching the age where attendance at school is

compulsory, the more relevant a parent's ability to continue to maintain the appellant will become.

21. It is, therefore, always necessary in cases involving the ability of a parent to adequately maintain an appellant in an appeal under paragraph 297 to bear in mind that the maintenance requirement does not cease on the child attaining the age of majority and, depending on the appellant's personal circumstances, it may continue for sometime beyond an appellant's eighteenth birthday and that as the Tribunal is concerned only with the circumstances appertaining as at the date of the decision under challenge, it is improbable that any evidence of the child's future potential earnings will be more than speculative and so unlikely to be capable of being taken into account.
22. This appellant, as far as I am aware, has no particular skills which he can offer to a potential employer. According to his visa application, he is not working and is supported by the sponsor. Counsel pointed out that there was a job offer available to the appellant. The judge found that this was not a genuine offer, but in any event, paragraph 297(v) does not permit the appellant to be maintained through his own earnings.
23. I do not know whether the appellant can speak, read, write and understand the English language, but the grounds of appeal suggest that he is illiterate. While his visa application was completed in English, I do not know if he completed it himself, or if it was completed on his behalf. As at the date of the Entry Clearance Officer's decision, there was no evidence to suggest that the appellant had any readily marketable skills which he could offer to potential employers. It was reasonably foreseeable that it would be necessary for the appellant to at least undergo some skills training to equip him for employment. Bearing in mind that there was no evidence before the First Tier Tribunal Judge and no evidence submitted to me to indicate that the appellant can understand or speak English, quite apart from whether he can read and write English, it seems to me to be reasonable to assume that the sponsor ought to be able to demonstrate that she can adequately maintain the appellant for a period of at least two years, to enable the appellant to have sufficient time to be able to acquire sufficient skills to enable him to find employment, such that he would be able to maintain himself without the need for State support.
24. The sponsor had funds adequate to make up the shortfall in the difference between her earnings and the income support level for a period of only 71 weeks. Bearing in mind that there is no evidence to suggest that the appellant can understand English, or has any skills which he can offer to a prospective employer, apart from menial labouring, I believe that it is reasonable for the appellant to demonstrate that the sponsor will be able to adequately maintain him for at least two years after his arrival

in the United Kingdom. I find, therefore, that the appellant fails to meet the requirements of paragraph 297(v).

25. In making her decision First-tier Tribunal Judge Mozolowski erred on a point of law. I do not set aside her decision because I have found that her error was not material and could not possibly have affected the outcome of the appeal. The appellant's appeal is dismissed.

Upper Tribunal Judge Chalkley