



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/18002/2012

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 27 November 2013

Determination Promulgated
On 13 December 2013

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

TEHMINA UMEED

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr F Ansari of Richard Nelson LLP
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 18 January 1947. On 12 March 2012, she applied for entry clearance under para 317 of the Immigration Rules (HC 395 as amended) to settle in the UK with her son, Mr Shanah Umeed who is a British citizen. On 28 August 2012, the Entry Clearance Officer refused the appellant's application.

2. The appellant appealed to the First-tier Tribunal. It was accepted by the Respondent that the only live issue before the judge was whether the appellant could show that she was “financially wholly or mainly dependent” on her son in the UK as required by para 317(iii). The respondent accepted that the appellant met the remaining requirements of para 317. Judge Cresswell heard oral evidence from the sponsor and his wife and considered a number of documents submitted on the appellant’s behalf. He accepted the evidence of the sponsor and his wife as giving “a wholly truthful account” (see para 15(ii)). He accepted that the evidence was that the appellant had a pension of £168.93 per month. He accepted that she lived in the family home of which she owned a one eighth share since her husband’s death. She paid no rent. The evidence was, and as I say the judge accepted this, that the appellant spent between £45 and £51 on food per week and, because of her health, she spent between £60 and £70 per month on medicines. The judge accepted the evidence that the appellant on average spent £155.62 per month on utility bills. There was, however, no evidence as to how much she spent on clothing. Adding those figures up, the total spending per month would, therefore, come to something in the order of £400.
3. At para 15(vi) the judge made the crucial finding in relation to para 317(iii) as follows:

“The Appellant’s total monthly outlay, therefore, on food, electricity, gas, telephone and medicine is some £300 (say £180 for food, £155.62 for utilities and £65 for medicine). Added to that will be some clothing expenditure. Even being as generous as allowing in the figures given by the witnesses for which there was no supporting evidence (i.e. food and medicine) and their estimates of the average utility bills, the Appellant herself provides the monies from her pension for well over half of her costs.”
4. As a consequence, the judge found that the appellant was not “wholly or mainly” financially dependent on the sponsor and dismissed the appeal.
5. The appellant sought permission to appeal on a number of grounds including that the judge had made a simple arithmetical error in para 15(vi) of his determination. The appellant’s monthly outlay was not “some £300” but rather was some “£400” when the figures for food, utilities and medicine were added together. Consequently, since the appellant’s pension was only £168.93 she was “mainly” financially dependent on her son to make up the shortfall to £400. On 9 September 2012, the First-tier Tribunal (Judge W L Grant) granted the appellant permission to appeal. Thus, the appeal came before me.
6. Mr Ansari began his submissions by relying on his skeleton argument and the obvious arithmetic error that had been made by the judge in para 15(vi). He submitted that if the judge had done the arithmetic correctly he would probably have found that the appellant was “mainly” financially dependent on her son and therefore met the requirement in para 317(iii).
7. At this point, I enquired of Mr Richards who represented the Entry Clearance Officer, what was his position in relation to this error which seemed, to me, to be readily apparent. Mr Richards frankly accepted that he was in difficulties in

maintaining the judge's decision. He accepted that the judge had made an arithmetic error and that the correct figure for the appellant's outgoings per month was some £400. He acknowledged that on the judge's finding the appellant was receiving the balance of some £400 beyond her monthly pension of £168.93 from the sponsor. Mr Richards did not seek to uphold the judge's decision that the appellant had not established that she met the requirements in para 317(iii).

8. I accept Mr Ansari's submission that the judge made a factual mistake amounting to an error of law in para 15(vi). The correct figure for the appellant's total monthly outlay on food, utilities and medicine should have been "some £400". The judge accepted the evidence of the sponsor and his wife as being "wholly truthful". The judge accepted that the appellant's pension per month was £168.93 and that the shortfall for her monthly outgoings was provided by the sponsor. Consequently, the appellant was financially dependent upon her son for more than half of her income. She required at least £232 to meet her outgoings. As a proportion of her financial needs, I am satisfied on a balance of probabilities that she was, as a result, "mainly" financially dependent upon the sponsor and so met the requirement in para 317(iii) of the Immigration Rules.
9. It being accepted that the appellant met the remaining requirements of para 317, I am satisfied on a balance of probabilities that the appellant met all the requirements of para 317 at the date of decision.

Decision

10. For these reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal under the Immigration Rules involved the making of an error of law. That decision cannot stand and I set it aside.
11. I remake the decision allowing the appellant's appeal under para 317 of the Immigration Rules.

A Grubb
Judge of the Upper Tribunal

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I make a fee award for the whole fee (if any) that has been paid or may be payable.

A Grubb
Judge of the Upper Tribunal