



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/02454/2013

THE IMMIGRATION ACTS

Heard at: Manchester
On: 1st July 2014

Determination Promulgated
On 5th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Nazia Shammeem
(no anonymity direction made)

Appellant

And

Entry Clearance Officer, Islamabad

Respondent

For the Appellant: Mr Afzal, IIAS

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

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 4th September 1976. She has permission to appeal against the decision of the First-tier Tribunal (Judge Birrell) dated 19th December 2013 to dismiss her appeal against the Respondent's decision to refuse to grant her entry clearance as the spouse of a person present and settled in the United Kingdom.

Background and Matters in Issue

2. This application for entry clearance was made prior to the statement of changes to the rules that took effect on the 9th July

2012. The Respondent's refusal dated 29th November 2012 raised only two issues: maintenance and accommodation.

3. Before the First-tier Tribunal the Sponsor Mr Mohammad Aslam gave evidence that he received £142.70 in pension payments plus £60 in housing benefit. It was common ground that the Appellant would succeed in her appeal if she could show, on a balance of probabilities, that her husband's income met or exceeded the amount that they would receive if they were living on benefits: KA (and others) Pakistan [2006] UKAIT 00065. In this respect the Tribunal identified a 'target figure' of £111.45 plus housing costs.
4. At paragraph 28 the Tribunal accepts the figures put forward by Mr Aslam and at 29 says this: "I am therefore satisfied that taking into account the cost of accommodation the appellant cannot meet the target figure set out in the refusal letter". The appeal is therefore dismissed.

Error of Law

5. The grounds of appeal submit that the First-tier Tribunal erred in its calculation of the amount that the Appellant and her husband had to live on. The KA target figure in this case was £111.45 *plus* the housing benefit. It was not contested that the Sponsor received £142.70 in pension payments *plus* £60 in housing benefit, which met the entire costs of his rent. At paragraph 29 it appears that the Tribunal calculated the Sponsor's income by taking his pension payments then deducting the rent. It is submitted that this was the wrong approach: in fact the pension payment plus the housing benefit was in excess of the target figure plus the housing benefit that the couple would receive on income support.
6. Before me Mr Harrison agreed that this was so. The First-tier Tribunal had erred in deducting the costs of housing when in fact that was a neutral factor in this case.

Decision

7. The decision of the First-tier Tribunal contain an error of law such that the decision should be set aside.
8. I re-make the decision by allowing the appeal.
9. There was no request for anonymity in this case and I see no reason to make such a direction.

Deputy Upper Tribunal Judge Bruce
29th July 2014