



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/21305/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> May 2014

Determination Promulgated  
On 2<sup>nd</sup> June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MRS MARYAM TAHIR  
(NO Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No representative  
For the Respondent: Mr S Kandola, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant**

1. The appellant is a citizen of Pakistan born on 27<sup>th</sup> May 1989 and she appealed against the decision dated 2<sup>nd</sup> October 2012 of the Entry Clearance Officer to refuse her entry clearance application dated 5<sup>th</sup> April 2012, as a spouse of Mr Tahir Ayub a British citizen present and settled in the UK and who has worked as a minicab driver with Swiss Cottage Car Services Limited from 2010 to date.
2. The appeal of Mrs Tahir was refused by Judge of the First-tier Tribunal Woolley on 31<sup>st</sup> October 2013 on the basis that the sponsor's income for the year 2012 to 2013 was insufficient.

3. At paragraph 18 of her determination the judge recorded that the sponsor produced a letter from his accountant Messrs N Malik & Co, a tax return and letter from HMRC from which the judge was satisfied that he made £10,456 gross, net £9,586 for the tax year 2012 – 2013. The judge stated that '*the sponsor has not provided details of his income for the year 2011/2012, despite the fact he says he has been in the same employment since 2010.*' The judge added that the letter from Swiss Cottage Car Service did not say how long he had worked for them [18]. The judge found that the tax paid was in fact for the tax year 2010 to 2011.
4. The judge did make reference to the fact that the appellant or rather it was the sponsor had savings of £3,994.13 at the date of the decision.
5. An application for permission to appeal was made on the basis that the judge confused herself by taking into account irrelevant issues such as the brother's rent in the house where the sponsor lived and whether the brother would move in or out. There was no evidence before the judge as to whether the sponsor's brother would remain and the judge also failed to consider that a three bedroom house was too big for a single couple and they may rent out further rooms.
6. Further the judge did not consider the current circumstances of the sponsor's bank account, his current earnings and concluded in paragraph 18 that the sponsor had not provided details of his income for 2011 to 2012.
7. Further it was contested that the judge failed to consider and include the £3,994.13 of the savings in any analysis of the shortfall. This was a significant amount of money for the sponsor and the judge did not take this into account.
8. The application was made prior to the advent of Appendix FM and the refusal was based on paragraph 281(v) that '*the parties will be able to maintain themselves and any dependants adequately without recourse to public funds.*'
9. The only issue remaining as at the First-tier Tribunal was the issue of income.

### The Hearing

10. Mr Ayub the sponsor attended court and stated that he had submitted the evidence in the form of bank statements. Mr Ayub gave evidence and stated that his brother moved in June or July 2012 and no one else lived in the property. However there was no statement from his brother regarding the rent. He stated that his brother was still there.
11. Mr Kandola submitted that the income support levels were identified correctly by the First-tier Tribunal Judge at £111.45 per week for a couple. This equated to £445 per month. The sponsor had stated that he had accommodation costs of £300 a month but the application form indicated that the cost was £600 a month. In addition there was council tax of £100. This meant that the appellant was required to show the sum of £1,145. The sponsor claimed that he earned £184 per week which was the equivalent of £736 per month. Therefore the shortfall was £408 per month. The ISA could be taken into account but this was as at the date of decision on 2<sup>nd</sup> October

2012 £3,444. Over a period of two years this equated to £144 per month. Therefore there was, if £144 was subtracted from £408, a shortfall of £264 per month.

12. Mr Kandola submitted at the date of decision the property was occupied exclusively by the appellant and this was confirmed in the inspection report. There was no evidence that the brother paid half the rent.

### **Conclusions**

13. The appellant was found from the documentation to have been in receipt of £9,586 for the tax year 2012 to 2013 and indeed tax documentation was produced to this effect. This equates to £798.83 per month. Both the application form and inspection report for the property in Luton indicated that the appellant's sponsor alone occupied the property for which the rent was £600 per month. The evidence given by the sponsor was that his brother had moved in June or July 2012 but there was no evidence to this save the sponsor's oral evidence. The sponsor confirmed that he alone was responsible for the contract.
14. I also note that at the 2<sup>nd</sup> October 2012 the sponsor had an overdraft of £1,366.61 which would increase the shortfall.
15. **Jahangara Begum and others (maintenance - savings) Bangladesh [2011] UKUT 00246 (IAC)** confirms

*'Where the likely income of a family falls below the level of adequacy as established in the case of KA and others (Adequacy of Maintenance) Pakistan [2006] UKAIT 00065 the shortfall can be met where there are sufficient savings. The assessment of the appropriate level of savings is not an arbitrary calculation and the proper reference is to the length of the initial visa. If an appellant is able to meet the requirements of adequacy for the period of the initial visa, and there is no reason to believe that he will not be able to meet the maintenance requirements in the longer term, then he is entitled to entry clearance'.*

16. Further to **KA** the appellant needed to show that the sponsor had £445 per month for subsistence, £600 per month for rent and £100 per month for council tax. The sponsor earned £798.83 per month. He has in addition savings of £3,444. The length of the visa in this instance would be two years and this equates to £143.50 per month. I am not persuaded that the ISA savings of £3,444 could sustain the appellant over the two year period and therefore under the Immigration Rules and indeed this sum ignores the overdraft of the sponsor. I make the shortfall without taking into account the overdraft, £202.67 per month.
17. I find that the appellant cannot show that she and the sponsor are able to maintain themselves further to the immigration rules and I dismiss the appeal.
18. In fact no appeal was raised in respect of Article 8 either in the appeal to the First Tier Tribunal or in the application for permission to appeal.

19. I remake the decision and dismiss the appeal.

Signed

Date 30<sup>th</sup> May 2014

Deputy Upper Tribunal Judge Rimmington