



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/21626/2012
OA/21629/2012
OA/21630/2012

THE IMMIGRATION ACTS

Heard at North Shields
on 5th December 2013

Determination Promulgated
on 20th January 2014

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SEYEDA AFIA BEGUM
MUHAMMED HASAN ALI
LIMA ALI
(Anonymity direction not made)

Appellants

and

ENTRY CLEARANCE OFFICER (Dhaka)

Respondent

Representation:

For the Appellant: Mr Latif of Latif Solicitors.

For the Respondent: Mr Mcveety - Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. In a determination promulgated following a hearing at North Shields on the 13th June 2013 First-tier Tribunal Judge Hands dismissed the appeals of all three appellants against the refusal of the Respondent to grant entry clearance as the spouse and children of someone present and settled in the United Kingdom.
2. The first appellant is female and was born on the 18th July 1964. The remaining appellants are her son and daughter born in 1995 and 1996 respectively.

3. The determination was challenged on the basis Judge Hands dismissed the appeal by reference to the maintenance requirements of the Rules, specifically in terms of the level of income required. It is said this issue was not referred to by the respondent in the refusal notice, at the hearing, or by the Judge and the Judge erred in her assessment of the level of income required. Permission to appeal was refused by another judge of the First-tier Tribunal on the basis that even if the Judge has erred it has not been shown the required level of income was available. Permission to appeal was granted on a renewed application by the Upper Tribunal.
4. Judge Hands, in paragraph 15 of the determination, stated that the level of income required was "in the region of £280 per week" which is £1,160 per month. When the figure for the rent and council tax was added, the figure increased to £1,610 per month. The sponsor was found to have an income of £1,545 per month which is less than the required amount and so it was found the appellants had not proved they could be adequately maintained.
5. The Judge is criticised in the grounds seeking permission to appeal for not explaining how she arrived at the figure she did for the benefit entitlement figure of £280 per week. Mr Latif submitted that the correct figure is £243.79 per week which, when adding the rent and council tax figure equates to £1506.42 per month which is less than that relied upon by Judge Hands and the available income. On this basis it is said the appeals should be allowed.
6. The Upper Tribunal, in granting permission to appeal, noted the alleged procedural irregularity of determining the case by reference to an issue not previously raised without giving the parties an opportunity to respond has no merit for in paragraph 14 of the determination Judge Hands refers to the fact it was mentioned, and submissions made upon this point. The reason for the grant was the reference by Judge Hands to the required level of funds being "in the region of £280 per week" which not only lacks precision but is said to be factually incorrect by Mr Latif.
7. Directions were issued to the parties to provide calculations demonstrating the correct level of income support it is alleged is required to meet the requirements of paragraph 281 and as per the guidance provided in KA and Others (Adequacy of maintenance) Pakistan [2006] UKAIT 00065. As the date of decision is 11th October 2012 it is the rates of benefits payable at this date which is applicable. It is unfortunate that such an issue has to be resolved by the Upper Tribunal which could have been avoided had the appellants followed the guidance provided by the Tribunal in the case of Ahmed (benefits: proof of receipt; evidence) [2013] UKUT 84(IAC).
8. The schedules now provided show that it is accepted by both parties that the benefit payment to a couple is £111.45 per week to which must be added £64.99

for each dependant child making a total of £241.43 per week. The difference between them is the inclusion in the Respondents calculation of an additional sum of £17.40 per week for the Family Premium which increases the figure to £258.83 per week, still substantially less than the figure relied upon by Judge Hands of £280.

9. The rental figure of £350 and Council tax of £100 per months is not disputed which Mr Latif submitted gives a final figure of £1496.19 per month but on the Respondents figures £ 1571.59 per month. Mr Latif submits this is lower than the figure calculated by Judge Hands and less than the available income figure. On the Respondents figures the total is more than the available income referred to by the Judge but only by £26.59 per month.
10. In relation to the applicability of the Family Premium Mr Latif submitted that as it was not certain that the appellants will receive this premium it should be disregarded. I find no merit in such a submission. The Family Premium will be paid if a claimant or their partner is responsible for, and in the same household as, a dependant child under 16 years of age. As the second and third appellants are below this age the benefit provisions show that there is no doubt that the Premium will be paid and so must be included in the calculation. I find the correct figure is that relied upon by the Respondent.
11. It is also submitted Judge Hands erred in assessing the available income by reference to a gross rather than net figure. The evidence demonstrated a weekly net income for the sponsor from Mr A Basith T/A Kebab House of £150 and a £200 net weekly income from Seahouses Indian Restaurant Ltd giving a net weekly income of £350.
12. Reverting to weekly figures, the rent equates to £80.76 and the Council Tax to £23.07 meaning the accommodation costs total £103.83 per week. As per the guidance provided in Ahmed the calculation is therefore £350 - £103.83 = £246.17 which is £12.66 short of the weekly income support threshold. These figures, bar that relating to the Family Premium, were not challenged by Mr Latif.
13. There was before Judge Hands evidence of available funds of £1038.45 in the sponsor's Lloyd TSB bank account which I can take into account – see Jahangara Begum and others (maintenance savings) [2011] UKUT 246. The visa is of 27 months duration (117 weeks) and dividing the savings by this period provides an additional £8.87 per week leaving a shortfall of £3.79 on which basis I find the appellants are unable to meet the maintenance requirements of the Rules. As a result any error made by Judge Hands is not material to her decision to dismiss the appeal under the Rules.
14. Although not pleaded in the Grounds Mr Latif also sought to rely upon Article 8 ECHR but this was not raised in the original grounds of appeal or the skeleton

argument prepared for the hearing before Judge Hands and does not appear to have been pursued before her. As such it cannot be an error for the Judge not to have dealt with it and no legal error is proved.

15. Even if there was a valid Article 8 claim it has not been shown that it is bound to succeed. Although this is a family seeking to join the sponsor in the UK the core issue under the Rules is the inability to meet the maintenance requirements of paragraph 281. It is said to be unfair on the appellants but I find no merit in this argument as the case law and Rules set out the accepted legal principles that are Article 8 compliant. The argument the appellants may not be able to succeed under the requirements of the rules in force after 9th July 2012 is noted but a person is required to meet the minimum requirements in force at the date of application and it is not possible to say such requirements cannot be met in light of the fact the sponsor's income will be assessed at the date of a future application.
16. The requirement to demonstrate the availability of a minimum income is to ensure parties do not become reliant upon public funds. In [AAO v Entry Clearance Officer \[2011\] EWCA Civ 840](#) the Court of Appeal held that as Strasbourg and domestic jurisprudence had consistently emphasised, States were entitled to have regard to their system of immigration control and a requirement that an entrant should be maintained without recourse to public funds was a fair and necessary limitation on what would otherwise be an overwhelming burden on all its citizens.
17. The fact the shortfall may be thought to be 'minor' does not allow the appellants to succeed per se. The Supreme Court in [Patel and others v Secretary of State for the Home Department \[2013\] UKSC 72](#) has now effectively held that there is no near miss argument as such albeit that all facts have to be taken into account and considered in context.
18. In this appeal there has been insufficient evidence to show that the decision is wrong in law. The Respondent relies upon the economic needs of the UK being protected by the enforcement of effective immigration controls which is a strong argument as the income support figure is a minimum requirement it is said a family need to avoid destitution. In [Momotaz Begum \(18699\)](#) (Ockelton), the Tribunal rejected the suggestion that, just because an appellant is a member of a particular community, his or her needs might be more modest than would otherwise be the case. As the Tribunal stated "It is no part of the policy of the Immigration Rules to enable immigration in order to form a ghetto, or to promote a situation in which those who arrive in this country from abroad are expected to live at a standard below the minimum tolerated by others. That is the function of the requirement of "adequacy" in the Immigration Rules. It is not enough for the appellants to show that they have enough money to survive: they must show that they would be adequately maintained without recourse to public funds. What, then, is necessary for adequate maintenance? The level of

income support is often used. Income support is certainly not riches: but, as it is what is provided for a person or family who has no other income, and, as a recipient of income support is expected to be able to live on it, the respondent is in a sense estopped from saying that that level of income is not adequate”.

- 19. The Respondent has established the decision is proportionate on the known facts. No material error is proved.

Decision

- 20. **There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

- 21. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....

Upper Tribunal Judge Hanson

Dated the 16th January 2014