Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/14304/2014

THE IMMIGRATION ACTS

Heard at:	**Columbus House, Newport**	**Determination Promulgated**
On:	**20 April 2015**	**On 22 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SORIAN JUAN WILLIAMSON

(anonymity direction not made)

Respondent

Representation

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Trevaskis in which he allowed the appeal of Mr Williamson, a citizen of Jamaica, against the Secretary of State's decision to refuse to vary leave to remain. I shall refer to Mr Williamson as the Applicant, although he was the Appellant in the proceedings below.

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2. The application under appeal was made on 14 January 2013 and was refused by reference to paragraphs 248D (ii), (iii), (iv), (vii) and 248F of the Immigration Rules (HC395) on 25 February 2014. The Applicant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Trevaskis on 29 September 2014 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge P J M Hollingworth on 27 November 2014 in the following terms

> An arguable error of law has arisen in relation to the issue of whether all the requirements of the Immigration Rules have been met and whether the Judge has set out a sufficient analysis of the financial aspect of the Rule in question.

3. At the hearing before me Mr Richards appeared to represent the Secretary of State and the Applicant appeared in person. No additional documents were submitted.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Applicant was born in Jamaica on 27 September 1972. He came to the United Kingdom with leave to enter as a person exercising rights of access to a child on 27 January 2012. The child in question was the Applicant's son Harvey Williamson who was born on 16 November 2002. On 14 January 2013 the Applicant made an in time application for indefinite leave to remain on the basis of his access rights to the child. In reusing the application the Respondent stated that she was not satisfied that the Applicant met the requirements of paragraph 248D (ii), (iii), (iv), and (vii) of HC395. Specifically the Respondent was not satisfied that the Applicant was taking an active role in the child's upbringing, that the child visited or stayed with the Applicant on a regular basis, that there would be adequate accommodation for the Applicant without recourse to public funds or that the Applicant had sufficient knowledge of the English language and life in the UK.

5. At the appeal hearing on 29 September 2014 the Applicant was not represented. After hearing evidence from the Applicant the Judge found that he met the requirements of the Immigration Rules and in particular that he took an active role in the child's upbringing, saw the child regularly, had adequate accommodation and met the English language and knowledge of the UK requirements of the rules. These findings are not challenged before the Upper Tribunal. The Judge also found, although this was not challenged by the Secretary of State in the refusal letter, that the Applicant had maintained himself adequately without recourse to public funds (paragraph 41). In making this finding the Judge noted that this fact was not challenged.

Submissions

6. On behalf the Secretary of State Mr Richards relied on the grounds of appeal to the Upper Tribunal. He said that the issue was narrow and confined to whether the Applicant met the requirements of paragraph 248D (v). The Judge makes it plain that he is satisfied that the Applicant is able to maintain himself adequately without recourse to public funds but does not give clear reasons for this finding. The grounds of appeal highlight that at the date of the hearing the Applicant was working three hours a day for three days a week with a gross wage of £58.50 whereas income support level for a single person in his position would have been £72.40.

7. Responding to Mr Richards the Applicant said that he had been unable to seek other employment because the Home Office retained his passport. At the time of the hearing he was getting £58.50 per week and was also getting help from his family. However at the date of the Respondent's decision he was working four days a week from 08:00 to 13:00 and sometimes worked longer hours.

8. In response Mr Richards fairly pointed out that the Respondent's refusal had not challenged the Applicants ability to maintain himself. He said that the First-tier Judge had erred in law by failing to give adequate reasons for his finding in respect of maintenance but added that the Tribunal would need to decide whether such error was material.

Error of law

9. In my judgement the decision of the First-tier Tribunal does not disclose a material error of law. The facts are simple and are not disputed. The Applicant is, and at all times has been, lawfully present in the United Kingdom. He made his application for variation of leave to remain in January 2013 submitting full details with his application. The application (section 5.3) shows that at the time of his application he was earning a net pay of £320 per month. When the Respondent refused the application in February 2014 neither the refusal notice nor the accompanying letter challenged the Applicant's ability to maintain himself without recourse to public funds either in terms or by reference to paragraph 248D (v) of HC 395.

10. Further the Respondent was represented at the First-tier Tribunal hearing. In making his finding that the Applicant has maintained himself adequately without recourse to public funds the Judge notes *'because he has given evidence of that fact to me which is unchallenged'*. It is clear from this that if the Respondent had considered that at the time of her decision the Applicant did not meet the maintenance requirements of the rules a challenge could have been made. It was not. No doubt this is because, as

the Applicant said in his submissions to the Upper Tribunal, he was working four days a week for a minimum of five hours a day which would have given him a net income of about £130 per week at the time of the Respondent's decision.

11. In my judgement the First-tier Tribunal did not err in law by making a positive finding on an unchallenged fact. My conclusion from all of the above is that the decision of the First-tier Tribunal contains no error of law material to the decision to allow the appeal. The appeal of the Secretary of State is therefore dismissed.

Summary

12. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the Secretary of State's appeal.

Signed: **Date: 20 April 2015**

J F W Phillips
Deputy Judge of the Upper Tribunal