



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/00879/2014  
OA/00878/2014  
OA/00880/2014  
OA/00881/2014  
OA/00882/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 November 2015**

**Decision & Reasons Promulgated  
On 30 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE HANSON  
UPPER TRIBUNAL JUDGE WIKELEY**

**Between**

**MEHMAZ AKBAR  
UMER FAROOQ  
RAMSHA SIRAJ  
MUHAMMAD USMAN  
LAIBA SIRAJ  
(ANONYMITY DIRECTION NOT MADE)**

**Appellants**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellants: Miss K Tobin, Counsel, instructed by Ahmad Associates PVT Ltd  
For the Respondent: Mr Duffy, Home Office Presenting Officer

## DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Greasley, promulgated on 2 January 2015 following a hearing at First-tier Tribunal Richmond on 11 December 2014, in which the judge dismissed all five appeals of this family unit under the Immigration Rules and Article 8 ECHR. Before the Tribunal this morning Miss Tobin has appeared to represent the appellants', Mr Duffy has attended on behalf of the Secretary of State.
2. The judge in the determination examined the evidence that had been provided and although the quality of that evidence was correctly identified as being poor by reference to its legibility, the judge went on in paragraph 18 of the determination to make a finding that he or she could not be satisfied that the documents provided were genuine and therefore reliable documents. In paragraph 21 the judge repeats such an assertion, stating that he or she was unable to accept that the evidence provided relating to financial matters is reliable and therefore credible.
3. The ground of challenge to that finding is that this raised an issue that was not relied upon by the Entry Clearance Officer in the notice of decision dated 28 November 2013 and was effectively a fresh matter of which the parties had no notice.
4. Before the Tribunal today Mr Duffy conceded that ground of challenge, namely that in going ahead and dealing with a matter in relation to which the parties had no notice and were therefore denied the opportunity to make submissions or call evidence, there had been a procedural irregularity sufficient to amount to an arguable error of law. We support that concession. We set aside the determination of Judge Greasley.
5. We proceed to remake that decision. This is an application by nationals of Pakistan, a mother, two daughters and two sons whose dates of birth are set out in paragraph 1 of the First-tier Tribunal determination who seek permission by way of entry clearance to join their husband and father who is in the United Kingdom lawfully as a sole representative.
6. The issue in relation to which the applications were refused related to one point when one considers the documents, namely the availability of capital funding to meet the maintenance requirement.
7. The starting point in any case involving pre-Appendix FM applications is to consider whether the adequacy of maintenance test is satisfied by reference to the relevant level of income and of the benefits that would be available if the family were drawing income support. We refer only to

income support at this stage and the maintenance issue as the availability of accommodation was conceded before the First-tier Tribunal by the Presenting Officer and is not a live issue before us today.

8. The starting point in any such assessment of a pre-Appendix FM maintenance assessment is to check that the figures that have been provided and relied upon accurately reflect the appropriate benefit level.
9. In the determination of the First-tier Tribunal at paragraph 15 there is reference to a figure of £6,899.08 being the required figure. It has been ascertained this morning that that figure in fact is wrong and not only marginally but substantially wrong. The income support level for a married couple with four dependent children when including the family premium of £17.50 equates to £20,403.76 per annum. The sponsor's evidence throughout has always been that he could satisfy the maintenance requirements as he receives an income of £20,000 per annum from his employment. That clearly was insufficient to satisfy the £20,403.76 minimum requirement making this family unit dependent upon the availability of capital.
10. The ECO was not satisfied that the capital disclosed in various bank accounts was genuinely available. This Tribunal has had the benefit of being able to consider witness statements by the sponsor and the named individual relating to how the capital that was in that bank account became available and how the capital in that bank account does represent funds that are properly available to the sponsor, under his control, and for him to spend as he requires.
11. Although Mr Duffy did not concede the availability of capital he quite correctly recognised that he had nothing within his armoury of submissions that he could put forward to gainsay or counter the submissions that had been made in the witness statements relating to the availability of those funds. The test for us to consider is whether the appellants have discharged the burden of proof upon them to the required standard that being a civil standard, to show that the required level of funding is available. It is accepted, and there is Tribunal authority on this point, that if income is insufficient to discharge the maintenance requirement recourse can be made to available capital which will then require an assessment of dividing the shortfall by the capital to see whether the capital funds will cover the requirements for a specified period, previously two years under the old case law, when the need to prove reliance or avoidance of reliance on public funds may no longer be an issue.

12. The balance in the Pakistan bank account equated to £9,427 according to the figures provided by the Entry Clearance Officer which when divided by the shortfall of £403.76 shows capital, which is available, sufficient for over 23 years substantially in excess of those realistically going to be required.
13. For that reason we do find that the appellants have discharged the burden of proof upon them to the required standard to show that they were able to satisfy all the requirements in paragraph 197 of the relevant Immigration Rules and on that basis we allow the appeals.

**Notice of Decision**

14. The appeal is allowed under the Immigration Rules.
15. No anonymity direction is made.

Signed

Date 24 November 2015

Upper Tribunal Judge Hanson

**TO THE RESPONDENT**  
**FEE AWARD**

As we have allowed the appeal and because a fee has been paid or is payable, we have considered making a fee award and have decided to make a full fee award.

Signed

Date 24 November 2015

Upper Tribunal Judge Hanson