



IAC-FH-AR-V1

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

Appeal Numbers: OA/04436/2014
OA/04438/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 January 2016**

**Oral Decision & Reasons
Promulgated On 18 February 2016**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

(1) RM

(2) PB

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Hasan, Solicitor, Kalam Solicitors

For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of two Bangladeshi citizens who at the material times were both minors. They are brother and sister, [RM] was born on 13 September 1998 and his sister was born on 7 March 2002. At the time of the decision that I made following a hearing at Field House on 17 September 2015 they were 17 and 13 respectively. They sought entry clearance to join their parents who are their sponsors in the United

Kingdom with their two younger siblings. Both were refused by an Entry Clearance Officer's decision made on 19 February 2014.

2. When the matter came before me on 17 September 2015 I found that there was an error of law. I gave directions in paragraph 25 of my decision in which I stated that I wanted to know the position both from the Entry Clearance Officer, via the Presenting Officer, and I also wanted to know the position from the appellants as to how they said they met the requirements of paragraphs 297(4) and (5) of the Immigration Rules. The relevant requirements are:

Children

Leave to enter or remain in the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom

297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

- (iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and
- (v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds...

3. In each case, the material consideration is whether the presence of these two children in the United Kingdom will increase the burden on the public purse by their presence in the United Kingdom. The starting point, and it is only a starting point, is the level of earnings. If the level of earnings is established, then it is common ground that at the material time there was a surplus of something like just over £28 per week. The precise figure is £28.73 per week and so the first question is whether or not the sponsors have established that they earned at the relevant level.
4. The documentation with which I have been provided deals with the sources of income of both the husband, [M], and his wife who is known as [B]. It appears that the husband from the commencement of his work on 1 August 2013 until the tax year ended 5 April 2014 was paid £5,552. The evidence of that is found in a letter from HM Revenue and Customs dated 11 June 2014. It provides a series of reference numbers and national insurance numbers and, on its face, it is the original document that I have. It is not a copy.
5. On its face it establishes that was the relevant level of pay. It was that level of pay which was the basis upon which the calculation was made and which provides the surplus of £28.73. In addition to that there was a P60 also for the tax year ended 5 April 2014 in the name of [M] showing the same national insurance number. We know that P60s are provided by employers and so one might properly look with some caution at whether this is a genuine document, but it bears exactly the same figure as the document from HM Revenue and Customs. It shows that during the period the employer was able to produce a statement that [M] had earned £5,552.

6. In addition to that there were a number of payslips. Those payslips were questioned by the Entry Clearance Officer and quite rightly so, because they all showed exactly the same amount; the same amount of deductions and the same figure appeared month after month. There was a four month period of payslips which had been identified covering a period from November 2013 to February 2014 which showed identical sums being paid each month. There was therefore a question mark as to whether those documents were genuine.
7. However since my original hearing there have been documents that have been provided. In particular there is, at page 8 of the bundle, an employment confirmation from Akash Restaurant, which is where [M] is working, showing his national insurance number, the date of commencement and the fact that this is a part-time and permanent job as a cook. He receives a basic salary of £694 per month by cash for working 24 hours per week.
8. All of those factors are consistent with the other documentation. They are consistent with the form from HMRC showing that the commencement was on 1 April 2013. [M], the director of the restaurant, says importantly, all the payslips of [M] showed the exact net pay each month because [M]'s salary does not attract any income tax and his national insurance contribution does not vary. Furthermore [M] is not required to pay any income tax because his salary falls within the tax free personal allowance. And one can see in the relevant payslips a small amount of about £5 which is deducted by way of national insurance because his income marginally goes above the rate for which national insurance is paid. Consequently the payslips (the originals of which are available), the P60, (the original of which is before me), and the letters from HM Revenue and Customs, all establish that his level of income is that which he says he earns and which was the basis of the calculation provided by the Entry Clearance Officer.
9. Similar documentation is provided in relation to his wife. Her income is shown as being £6,300 per annum. She too has got a letter from HMRC dated 6 January 2015 and shows that for a company called Callingford Limited, where she works as a cleaner, she received £6,300 for the tax year ended 5 April 2014. That is the tax year with which I am concerned and it shows a slight increase, an increase of only £60 per year from the previous annual tax return. Once again I have seen the original document from HM Revenue and Customs. She too has provided a letter from her employer. This at page 7 of the bundle before me and it shows that Callingford Limited trading as X-Presslink Properties confirm that [B] has been working as a property cleaner since July 2011 and was paid £525 per month which equates with the £6,300 per annum; she is paid in cash for 70 hours a month. Her payslips do not vary every month because she is neither required to pay any income tax nor national insurance contributions because her salary does not exceed the tax free personal allowance. That is what the evidence was. She too has provided payslips in the form that supports the claim that is made.
10. In those circumstances I am not prepared to find that these documents are forged or that they cannot be relied upon and it establishes that there is a level of income

which is in excess of the sum of £28.73 over and above that which is the relevant benefit level.

11. It does not seem to me that the challenges made by the Entry Clearance Officer are valid insofar as there was an attempt by the Entry Clearance Officer previously to make deductions by way of contributions to utility bills. For reasons that I gave in the error of law finding on 18 September 2015 I do not accept that those deductions are properly made to reduce the benefits level below the surplus of £28.73.
12. There was also an issue as to whether the remaining daughter, whom I understand is not a minor - a daughter remaining in Bangladesh - should have the sums of money that she receives or has received in the past deducted. It seems to me that where there is a contribution which is made which is not pursuant to a legal obligation, the fact that the parents have in the past contributed to assist [HB] does not mean that their level of income is to be reduced to an extent such that the two appellants are not entitled to entry clearance.
13. In particular there is no evidence that the parents were paying in excess of £28.73. Indeed if they had that amount of money to pay to the daughter and it was available to them and they were able to pay, then doubtless they would pay. That does not mean that they are under an obligation to pay. I cannot see how, if they were to apply for benefits, they would be entitled to say "and by the way our benefit level must be increased because we make voluntary contributions to our daughter in Bangladesh at a level which is such that we require the British tax payer to contribute to that voluntary payment we make". So I cannot see that the benefits they pay to [HB] will materially increase the likelihood of further recourse to public funds. That deals with the issue of maintenance.
14. I now come to the issue of accommodation. The house in which the children will live is a three bedroom property with a sitting room. That is treated as a four bedroom property and the material which has been provided by the respondent shows that this is to be treated as 7.5 units and each person over the age of 10 is to be treated as a unit and anybody who is under the age of 10 is to be treated as half a unit.
15. The calculations therefore are that the sponsor's two children currently in the United Kingdom, one of whom was at the date of application 8 years old and possibly also at the date of decision. That child is only counted as half a unit. The two sponsors are two units. There is a son called Imran who is aged 23. He counts as a further unit. His two siblings, one of whom I have already mentioned, are the sponsor's two children in the United Kingdom. The two appellants are aged 17 and 13 respectively at the date of the earlier decision, and they therefore attract one unit each. That totals 6.5 units. Accordingly on the face of it the accommodation is suitable.
16. There is also a letter from an inspection officer, Mr Rahman, from Signature Residential. He says that the proposed occupancy of the property will be seven people: 'In our professional view properties of this size are fit to accommodate up to eight people.' He may be slightly wrong as to whether it is eight or whether it should be properly treated as 7.5, but either way the accommodation is suitable.

17. We then come to consider whether or not the sponsors can meet the cost of the accommodation without recourse to public funds by reason of the presence of the appellants. At the moment the rent is payable at the rate of £453 per month and that is payable not by the sponsors but by their son Imran and he discharges that as his contribution. It is also recorded from the landlord that the rent is up to date. There is no suggestion that housing benefit is payable in relation to any member of the family. The document which certifies the payment of rent is found at page 9 of the bundle and it simply confirms that '[M] owes us no rent for the above property because he has paid all the rent promptly.'
18. It does not seem to me that there is going to be an additional burden or recourse to further public funds. My reason for saying it is as follows. The appellants when they enter the United Kingdom will have a stamp on their passport which indicates that they are not entitled to further benefits and it is the practice, as I understand it to be, that, were an application to be made for housing benefit to the local authority, the application would have to be supported by a statement from the applicants indicating the relevant immigration status of those who are living in the property such that the providers of housing benefit know whether housing benefit is payable.
19. It is my understanding from what the parties have jointly submitted that these two appellants will not have a passport which indicates that they are entitled to recourse to public funds and accordingly I cannot see the way upon which there will be further recourse to public funds even if an application were made on the part of the sponsors. It must surely be the case that some investigation is made by those providing housing benefit from public funds that the eligibility of those in the house to receive public funding is considered. Since it is clear that the two appellants are not entitled to receive public funds by way of housing benefit or in any other form, I do not see how their presence can materially increase the recourse to public funds.

NOTICE OF DECISION

20. In these circumstances I consider that the requirements for entry clearance have been made out and accordingly I allow the appeal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL