Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14160/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 March 2019	**On 26 March 2019**

Before

UPPER TRIBUNAL JUDGE WARR

Between

PAS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Appiah of Counsel instructed by Omnis Legal Services
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana born on 5 July 2002. She applied to join her mother, Ms [S], the sponsor, in the United Kingdom in July 2017. The application was refused by the Entry Clearance Officer on 13 October 2017. Initially a point was taken on the appellant's relationship with the sponsor but following the reception of DNA evidence that matter was resolved in favour of the appellant and is no longer a matter in contention. However, it was argued that the financial requirements had still not been

met. The appellant's appeal came before a First-tier Judge on 23 November 2018. At the hearing Mr Colley, for the Entry Clearance Officer, sought to raise an additional issue (sole responsibility) but the First-tier Judge rejected the application of which no notice had been given and that conclusion is not in issue in this appeal. On the relevant Rules in respect of the financial requirement the representatives were in agreement that the Entry Clearance Officer had erred as appears from the following extract of the determination:

> "10. Both Mr Colley and Ms Appiah submitted that the ECO had not applied the correct provision of the Immigration Rules. As the parent of the Appellant has limited leave to remain as a parent under Appendix FM, paragraph E-LTRC.2.3A provides that:
>
> > *'... the applicant must provide evidence that the parent is able to maintain and accommodate themselves, the applicant and any other dependents adequately in the UK without recourse to public funds.'*
>
> 11. Mr Colley submitted that, as Ms [S] is in receipt of public funds, the Appellant cannot satisfy this criteria. Ms Appiah submitted that *"without recourse to public funds"* means without recourse to additional public funds".

The First-tier Judge accepted the submissions made on behalf of the respondent and there was no room for a gloss on the meaning of the phrase "without recourse to public funds" and there was no ambiguity in the wording. In the light of her conclusions that the appellant did not meet the relevant requirements of the Immigration Rules, the judge went on to consider the case on Article 8 grounds and although she found that it was in the best interests of the appellant to be with her mother, and although the decision was "finely balanced", the public interest outweighed any interference with the appellant's family life with her mother. Accordingly, the judge dismissed the appeal.

2. In the grounds of appeal it was argued that the respondent's representative had submitted to the Tribunal a position that did not follow the guidance to caseworkers on the consideration of adequate maintenance and reference was made to the Home Office guidance published in August 2015 at Annex F "Adequate Maintenance and Accommodation". It was submitted that it was clear from the examples that adequate maintenance allowed for the calculation of benefits received by the sponsor which usually would be in addition to the income of the sponsor and that the purpose of the Rules was to ensure that "there is no further expectation or need to rely on benefits by the appellant or sponsor". It was submitted that the additional statement of the sponsor submitted at the court hearing clearly showed the income was adequate for the purposes of the Rules. Reference was also made to **Ahmed (benefits: proof of receipt; evidence) Bangladesh [2013] UKUT 84 (IAC)** where it was said that the Tribunal had clearly considered the benefits of the sponsor received in the UK as part of the assessment of adequate maintenance.

3. Reference was made to paragraph 297(i)(v) which stated "can, and will, be maintained adequately by the parent, parents or relative the child is seeking to join, without recourse to public funds"; and it was submitted that public funds was relevant "only insofar as the appellant cannot seek to rely on maintenance that means there will be an additional recourse to public funds".

4. There was an application for permission to appeal on 21 January 2019 and it was found to be arguable that the judge had misdirected herself as to the appropriate approach to be taken when considering the issue of adequate maintenance. It was noted that the case of **Ahmed** did not appear to have been brought to the attention of the First-tier Judge. At the hearing before me Ms Pal accepted that the First-tier Judge had erred in law on the question of the interpretation of "without recourse to public funds".

5. It was submitted by Counsel that the appellant did comply with the requirements of the Rules insofar as maintenance was concerned and he pointed out that the figures given in the determination had been accepted by the judge.

6. I put the matter back so that the appellant's statement and details of her income could be made available. The parties went carefully into the figures and I am extremely grateful to Ms Pal for taking the time and trouble to analyse them. There was one item which turned out to be child benefit but as Counsel explained, even if these figures should not have been included in either table, it would make no difference to the outcome and there would be no additional recourse to public funds. Ms Pal was in agreement.

7. It is agreed that there was a material error of law in the decision of the First-tier Judge. It is unfortunate that the respondent's representative at the hearing before the First-tier Judge put forward an approach which is now accepted to be wrong.

8. I am satisfied that the arrival of the appellant will not cause an extra burden on public funds. I note that even when concluding that the Immigration Rules were not satisfied, the judge had said that it was a finely balanced decision when considering Article 8 and proportionality.

9. In the premises it is right to allow this appeal given the consent of both parties. Indeed, had the judge found as is now conceded that the appellant's submissions on the interpretation of the phrase "without recourse to public funds" were correct, she would no doubt have allowed the appeal.

10. For the reasons I have given the decision of the First-tier Judge was materially flawed in law. By agreement I reverse that decision. The appeal is allowed.

Decision:

Appeal allowed

Anonymity Direction

The First-tier Judge made an anonymity order which I continue.

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 her or any member of her 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.

Fee Award

The First-tier Judge made no fee award as she had dismissed the appeal. In my judgment, it is appropriate in the circumstances of this case for a full fee award to be made to the appellant.

Signed Date 22 March 2019

Judge Warr, Judge of the Upper Tribunal