



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/02835/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 2 June 2014

Determination Promulgated  
On 16 June 2014

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MRS AMBREEN ABBAS

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Ms D Qureshi, Counsel  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Khawar who, in a determination promulgated on 6 February 2014, dismissed the appellant's appeal against the decision made by the respondent on 5

December 2012 to refuse her entry clearance to the United Kingdom pursuant to paragraph 281 HC 395.

2. The appellant's case is that she is lawfully married to Mr Imran Abbas ("the sponsor") and, having met all the requirements of paragraph 281 of the Immigration Rules, ought to be granted entry clearance to the United Kingdom. Given that in this case the application for entry clearance was made on 5 July 2012, the relevant paragraph for consideration is paragraph 281 of the Immigration Rules; by virtue of the transitional provisions set out in HC 194, this is not a case to which the provisions of Appendix FM or Appendix FM-SE apply.
3. The respondent refused the application on the basis that he was not satisfied, given the lack of evidence submitted, that the sponsor would be able to adequately maintain the appellant in the United Kingdom without recourse to public funds.
4. Subsequent to that decision the couple have had a child, born in Pakistan, on 21 November 2013. As the sponsor was at that point a British citizen it appears that the child is a British citizen.
5. The appeal came before First-tier Tribunal Judge Khawar sitting at Hatton Cross on 30 January 2014. He heard evidence from the sponsor and submissions from both representatives. Judge Khawar found:-
  - (i) that the sponsor was employed as a taxi driver with a net income of £7,316 [15];
  - (ii) that, notwithstanding some doubts, that he was satisfied that the sponsor owns his own home and has let out part of the property to a lodger since 2007 [17] from whom he now receives £600 per month [18] and that that money had been paid to the sponsor as at the date of decision;
  - (iii) in fact the figure of £600 could not be a net figure as it did not include any deduction for income tax which would have been payable nor payments towards utility bills [19];
  - (iv) that the relevant level of income support applicable in assessing whether there would be additional recourse to public funds would be £193.84 per week excluding housing costs; that on an annualised basis this amounts to £10,079.68 to which mortgage costs of £3,660 per annum and council tax of £1,111.90 to be added making a total of £14,851.58 [14]; that this was well in excess of the sponsor's income even before the deductions from the lodger's rent were taken into account [21] and accordingly, the maintenance requirements could not be satisfied.
  - (v) that the refusal of entry clearance was not in breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention [26].
6. The appellant sought permission to appeal on the grounds that:-

- (i) that the judge had erred in his calculation of the relevant income support payments given that he had taken into account a child who had not been born as at the date of decision and thus had adopted an incorrect figure of benefits the relevant annual figure being £5,795.40 not £10,079.68;
  - (ii) that the judge had erred in taking the appellant's child into account yet not taking into account the subsequent increase in the sponsor's income;
  - (iii) that the judge had erred in his assessment of the sponsor's total income when making deductions in respect of the lodger;
  - (iv) that on a proper calculation of the sponsor's income and the relevant threshold of benefits, that there was surplus income and thus the conclusion that the appellant would need to have recourse to public funds was incorrect; that the judge's approach to Article 8 of the Human Rights Convention was incorrect.
7. On 7 April 2014 First-tier Tribunal Judge Lloyd granted permission stating that it was arguable that the judge had taken into account in the maintenance assessment a child who had not been born at the date of decision.
8. When the matter came before me Mr Tufan very fairly conceded that the judge had erred when assessing the relevant level of benefits by taking into account a child who not only had not been born at the date of decision but had not even been conceived. He submitted that, however, this error was not material because the judge's findings with respect to the income from the lodger were unsafe and inconsistent. Ms Qureshi submitted that whilst the judge had clearly been troubled by the late production of the evidence in respect of the lodger, he had nonetheless come to a sustainable finding of fact that the sponsor did in fact receive that income from him. She submitted that the sponsor had now made enquiries and had learned that he ought to have paid tax on some of his income although it is accepted that there is a specific tax relief in respect of income earned from lodgers of £4,250 per annum which has been in place since tax year 2009/10.
9. I noted from the determination that it appears the lodger has only been paying £700 a month since June/July 2013 [17]. Ms Qureshi did not dispute that and it was agreed that in assessing the sponsor's income a figure of £4,800 would be applicable when added to his earnings as a self-employed taxi driver.
10. I am satisfied that the judge did err in assessing the appropriate level of income support given that the child had not even been conceived at the date of birth. It therefore follows that there is a significant error in his evaluation as to whether there was sufficient funds available to the appellant and sponsor.
11. It is not disputed that the sponsor received £7,316 from his self-employment as a taxi driver. Whilst I note that there were submissions made to Judge Khawar that the evidence relating to the rental income from Mr Afzar was lacking credibility, the judge notes [17] that there were a substantial volume of documents in relation to this indicating that he had lived at the sponsor's property since at least 2011; there were

two tenancy agreements and whilst the judge does refer [22] that even allowing for the very late production of evidence, that that in any way undermines his clear finding at paragraph 18:

On the totality of evidence produced I am satisfied that the sponsor does in fact receive £600 per month from the said Mr Afzar. I am satisfied that he was in receipt of such sum of money on a monthly basis as at the date of Entry Clearance Officer's decision [December 2012].

12. Viewing the determination as a whole together with the evidence adduced, I am satisfied that Judge Khawar did make a clear finding of fact that the sponsor was in receipt of income from Mr Afzar who lodges with him albeit that the correct figure should be £400 a month the reference in paragraph 18 to the said sum being it appears a mere slip.
13. On that basis I am satisfied that as at the relevant date the sponsor's income was £12,116. The relevant level of income support was £5,795.40 to which has to be added the housing costs of £3,660 and £1,109.90 giving a total of £10,567.30 which leaves a surplus of £1,549 over the applicable level of income support once housing costs have been deducted.
14. It must, however, be borne in mind that there would be expenses incurred in respect of the tenant. The additional payment in respect of council tax, as the sponsor would not be entitled to the single person discount, is already factored in.
15. It is of course difficult to assess in any meaningful way what additional expenditure by way of utility bills will be caused by an additional person living in the property. It still has to be heated and lit and water bills are not calculated according to usage. The surplus is over £100 a month. It has been suggested that the additional expenses would be in the region of £600 and I see no reason to doubt that.
16. It should be borne in mind also that the cost of utility bills is not a factor taken into account in assessing levels of income support; these are bills which need to be met in any event. Accordingly, I am satisfied that, on the balance of probabilities, that even allowing for a tax bill of £300 payable in respect of the income received from the lodger over and above the £4,250 limit (should that even be payable given the very low level of the sponsor's taxable income) but as at the date of decision the sponsor was in receipt of sufficient income whereby income available to him and the appellant was greater than the applicable level of income support and accordingly the appellant has shown that she would be maintained without additional recourse to public funds. I therefore allow the appeal under the Immigration Rules on that basis.

### **Summary of Conclusions**

- (1) The determination of First-tier Tribunal Judge Khawar did involve the making of an error of law and I set it aside.

(2) I re-make the appeal by allowing it under the Immigration Rules.

Signed

Date: 12 June 2014

Upper Tribunal Judge Rintoul