



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/24978/2012  
OA/24980/2012  
OA/24981/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 25<sup>th</sup> April 2014

Determination Promulgated  
On 16<sup>th</sup> May 2014

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

AB  
FB  
MB  
(ANONYMITY DIRECTION)

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

**Representation:**

For the Appellant: Mr A Rahman, Legal Representative of AR Immigration Service  
For the Respondent: Mr G Saunders, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by the Appellants who are sisters and citizens of Bangladesh whose respective dates of birth are 3 August 1997, 11 December 1994 and 15 August 2001.

2. The Appellants applied for an entry clearance to join their parents in the United Kingdom with a view to settlement under paragraph 281 of the Immigration Rules and their application was assessed under paragraph 301 of the Rules.
3. The decisions in relation to each of them were identical and in summary the Entry Clearance Officer (ECO) was not satisfied that they were related as claimed to their Sponsor or that there would be adequate accommodation (matters that were since resolved in their favour before the First-tier Tribunal).
4. The ECO was further not satisfied that the parties would be able to maintain themselves and any dependants adequately without recourse to public funds as required under paragraphs 281(v) and 301(iva) of the Rules.
5. In that latter regard and in refusing entry clearance, the ECO noted that the Appellants' sister in the UK, whom I shall simply call TB received £639.04 per month or £147.47 per week. TB's bank statements showed that she spent (as the ECO put it) "her entire income each month". The ECO was therefore not satisfied that "her offer of support [was] realistic".
6. The Appellants' appeal against that decision was dismissed before the First-tier Judge in a determination promulgated on 11 December 2013 but they successfully obtained permission to appeal that decision, not least because it was considered arguable that the First-tier Judge misdirected herself in calculating the first Sponsor's income.
7. Thus the appeal came before me on 12 March 2014 when (as recorded in my decision promulgated shortly thereafter) Mr Melvin who appeared for the Respondent informed me that whilst he accepted that the First-tier Judge had erred in the calculation of not least the Sponsor's father's income such as had led her into error, there remained a clear difference between the parties as to the materiality of this error given the ECO's discard of the United Kingdom sibling's (TB) income into his calculations that led him to conclude that the Appellants failed to meet the maintenance requirements of the rules.
8. At paragraph 29 of my decision, I had this to say:
  - "29. It is apparent to me, and I so find, that upon a reading of the determination, once the First-tier Judge had, upon her mistaken calculations, concluded that it rendered it impossible for the Appellants to meet the requirements of the maintenance Rules, and that her finding was thus dispositive of the immigration appeal, she must have in consequence, considered it unnecessary to investigate any other aspects of the ECO's refusal as in the light of her finding, it would have made no difference to her decision that the appeal should be dismissed.

30. It follows that, as I informed the parties', the First-tier Judge compounded one error of law with another, the effect of which was material to the outcome of the appeal, such that the determination of the First-tier Judge should be set aside."
9. I recorded that with the agreement of the parties, the fresh decision to be made would be upon the sole issue of whether and to what extent, the income of the Sponsor's daughter, TB, could be taken into account in order to show that the Appellants had established that they would be maintained adequately without recourse to public funds in accordance with the Rules.
10. In that regard, I was informed by Mr Rahman for the Appellants, that TB would give oral evidence for which purpose she would require the services of a Bengali/Syhleti interpreter. I also made appropriate directions for the purposes of the hearing that was resumed before me on 25 April 2014.
11. Prior to the resumed hearing and in accordance with those directions, the Tribunal received from the Appellants' representatives together with a covering letter dated 22 April 2014, their bundle of documents together with a skeleton argument. Regrettably, despite my earlier directions, the Respondent failed to do likewise. However, that problem was mitigated by the fact that the Tribunal had the benefit of an experienced Presenting Officer in Mr Saunders to present the Respondent's case before me at the resumed hearing.
12. In that latter regard and in reliance on the provisions of Section 84(5) of the Nationality, Immigration and Asylum Act 2002 and upon the guidance of the starred Tribunal decision in DR\* (Morocco) (ECO – post-decision evidence) [2005] UKIAT 00038, I was reminded by Mr Rahman within the skeleton argument that he authored, that I was not confined to a consideration of the evidence that was before the ECO. Indeed I have noted that in DR it was held inter alia that there was a contrast between "circumstances appertaining" at the date of decision and a matter "arising" after that, in entry clearance cases. Thus I agreed with Mr Rahman that I was entitled to consider post-decision facts that were material insofar as they shed light on facts in existence at the time of the ECO's decision.
13. At paragraph 9 of his skeleton argument and for the assistance of the Tribunal Mr Rahman reiterated those aspects of the Appellants' applications that were not in dispute that he accurately set out as follows:
- “ • The Appellants are related to the Sponsors (parents and UK siblings) as claimed
  - The Appellants' father is employed as a chef at Malikas Indian Restaurant Oxford since February 2012 and gets £280 per week.
  - The Appellants' mother is employed as kitchen porter at Peppers Burger, Oxford since January 2012 and gets £150 per week.

- The Appellants' parents' incomes on their own are insufficient to meet the family's maintenance costs.
  - The Appellants' eldest sister is employed as a general assistance at Ahmed Tandoori Indian Takeaway, Witney since February 2012 and gets approximately £648 paid in weekly instalments of £150.
  - If the Appellants' sister's income is included, there are sufficient maintenance costs for the family.
  - There is adequate accommodation for the Appellants and they will be living with their parents and two female siblings."
14. The Appellants' bundle of documents (quite apart from referring to relevant case law to which I had referred in detail in my promulgated error of law decision – attached) also included reference to Abubakar v ECO [2012] EWCA Civ 377 that held that one had to assess maintenance in the round. That case related to the practical reality in Rule 317 cases and to third party support that would be routed or accrued if not directly then indirectly to the Sponsor; the reality being there was one family unit and one family financial pot – there was no rule of “disaggregation” regarding such third party support.
15. I pause there because, in the course of the resumed hearing before me and having heard the parties' representatives closing submissions, I pointed out and indeed formed the view (to the extent if any that is relevant to the outcome of this appeal) that strictly speaking and on the evidence that I had both heard orally from Miss TB and from her written statement, it was apparent to me that the contribution which she claimed to make to the family income could not be regarded as “third party” support because she was in fact on her evidence, an integrated member of the family unit who lived with her parents and therefore contributed from her income to the family income pot.
16. As I say, the bundle of documents indeed included Miss TB's witness statement in which she maintained that she was a solvent individual who did not spend her entire income on her own personal use as originally envisaged by the ECO. She was single and continued to live with her parents in the family home, in relation to which her living and accommodation costs were jointly shared with the family. Miss TB maintained that she received her income in cash having initially used a bank to deposit some of her income and that she subsequently stopped using the bank due to a lack of habit. She kept some monies for her personal use but insisted she gave the rest to her parents for use towards the family and to cover all related costs.
17. At the outset of the resumed hearing before me, Mr Saunders most helpfully informed me, and I would agree accurately so, that really the purpose of this resumed hearing did not strictly speaking raise an issue of law. The fact was that the ECO had decided that Miss TB's earnings “were not up to scratch”. Mr Saunders

accepted that those earnings were potentially in play and the question was whether, on the evidence, the requirements of the maintenance Rules were met. Mr Saunders also happened to mention that had he been in a position to do a skeleton argument that would have been exactly what he would have said. Mr Rahman most realistically accepted that analysis.

18. Through the services of an interpreter with whom Miss TB expressed her satisfaction, she gave her oral evidence. Miss TB was asked what she did with her wages and she told me that out of her salary she kept back an average of £30 to £40 per week for her personal expenses but the rest of it went on a weekly basis to her parents, "according to their needs".
19. Miss TB clarified that this in fact meant that she gave her parents on average £110 per week and when asked how long this arrangement was likely to continue, she notably answered: "As long as I am working and as long as I am capable of doing it for my family I will continue to do that for them".
20. When cross-examined, Mr Saunders explained to Miss TB that one had to look at the situation as it stood in October 2012, the date of decision, and as to the arrangements at that time. Miss TB swiftly replied that the situation as it stood today was the same in October 2012.
21. There was no re-examination.
22. Mr Saunders in his brief and typically succinct submission to me said that he had looked at Mr Rahman's skeleton argument, in particular at paragraphs 16 and 17, and I feel it prudent in those circumstances to set below what Mr Rahman had to say in those paragraphs:

"16. The benefits guidance of 2012/2013 states that the Appellants, their parents and UK based siblings require the following minimum weekly funds after deducting accommodation costs:

• Parents	£111.45 (couple = £111.45)
• Applicants and minor sibling	£259.96 (child = £64.99)
• Eldest sibling [that is Miss TB]	£53.45 (single adult 18-25 = £53.45)
• Family premium £17.40	£17.40
<b>Total</b>	<b>£442.26</b>

17. The total income available to the Appellants from their parents' and sisters' earnings is approximately £579.56 per week. After accommodation costs of £128.96 per week (rent: £103.85; council tax: £25.11 per week) this leaves the family with approximately £450.60 per week. There are therefore sufficient funds for the Appellants, parents and siblings to maintain themselves."

23. Mr Saunders point was this; that he took no issue with the arithmetic in that when one looked at it, it appeared that the Appellants “squeaked in by £8.34”. However, Mr Saunders continued, if one took account of what Miss TB took for herself, albeit a modest amount, “they don’t get home”.
24. Mr Saunders concluded that Miss TB’s evidence was “entirely credible” but that on her evidence he repeated the family fell short.
25. Mr Rahman in response referred to the breakdown of the figures that he had set out at paragraphs 16 and 17 of his skeleton argument. He pointed out that of course the figures shown at paragraph 16 were designed to demonstrate what the benefits guidance was for the period relevant to this decision 2012-2013 and he continued as follows:

“The eldest sibling’s requirement is £53.45 – the £442.26 referred to quite properly by Mr Saunders as the “target figure” is made up of living costs for the eldest sibling, Miss TB.

The £30 - £40 per week that she kept for herself was essentially representative of that component i.e. the £53.45.

Those are living costs. The £442.26 target is the target after accommodation costs, namely rent and council tax.

The State has then determined that a single adult aged between 18 - 25 requires £53.45 per week for living costs. In that regard Miss TB has clearly shown that she takes £30 - £40 per week and actually then leaves the rest for her family.”

26. Mr Rahman continued that therefore the situation was academic. The fact that Miss TB was living with her parents meant that there was no rent, no bills, no food expenses, indeed expenditure that Miss TB had set out within her written statement. Mr Rahman concluded that if that money was then taken away then the £53.45 would have to be taken out of the equation, that in effect, would simply not make sense.

### **Assessment**

27. I begin by stating that I found, in common with Mr Saunders, the evidence of Miss TB both in terms of her written statement and oral evidence before me, to be wholly credible. I saw no reason to doubt anything that she had to say in evidence. I have reminded myself that in my error of law decision I had at paragraph 23 referred to what their Lordships had to say at paragraph 19 of Mahad (Ethiopia) v Entry Clearance Officer [2009] UKSC 16, that one should not lose sight of the fact that it was always for the applicant to satisfy the ECO that the third party support relied upon was indeed “assured”.

28. Whilst I do not necessarily regard Miss TB's contribution to the family income to represent that of third party support for the reasons I have given above, I am satisfied that her contribution to the family pot from her income was indeed "assured".
29. I agree with the reasons given by Mr Rahman for rebutting the contention raised by Mr Saunders in his closing submission.
30. Upon my consideration of the Rules and the relevant case law guidance to which I have earlier referred and applied against the backdrop of my findings, it is apparent that the Rules require evidence of an income at a given level from the number of people involved to establish an adequacy of maintenance without recourse to public funds. How the family spend that income is a matter for them. In particular since most people spend their money without significant weekly savings, if the Respondent's contention was correct, then the fact that the family lived up to its income would invariably render it impossible for another person to join a family unit however large the family income.
31. As it is, and on the basis of my findings in the present case, it is apparent to me not least to the requisite standard of proof, namely that of a balance of probabilities, that the Appellants have discharged the burden upon them to demonstrate that their UK siblings' sister's income can be brought into account to show that there is adequate maintenance available to them in accordance with the Immigration Rules.

## **Decision**

32. The First-tier Tribunal erred in law such that their decision in the present appeal should be set aside.
33. I remake the decision on the appeal by allowing it.

Signed

Date 7 May 2014

Upper Tribunal Judge Goldstein