



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/02168/2013
OA/02172/2013
OA/02170/2013

THE IMMIGRATION ACTS

Heard at: Manchester
On: 2nd June 2015

Decision Promulgated
On: 4th June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Mrs Shehla Israr
Master Muhammad Toheed
Miss Zainab Shah
(no anonymity direction made)

Appellants

and

Entry Clearance Officer, Islamabad

Respondent

For the Appellant: Mr Brown, Counsel instructed by Silverdale Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are all nationals of Pakistan. They are respectively a mother and her two children. They appeal with permission¹ the decision of the First-tier Tribunal (Judge Edwards) to dismiss their linked appeals against decisions to refuse them entry clearance for the purpose of settlement. The First Appellant

¹ Permission was initially refused by Designated First-tier Tribunal Judge Shaerf on the 13th January 2014 but was granted upon renewed application by Upper Tribunal Judge McGeachy on the 10th February 2015

sought, under paragraph 281 of the 'old' Immigration Rules, entry as the wife of Mr Israr Hussain Shah, a person present and settled in the United Kingdom. The Second and Third Appellants made their applications under paragraph 297 as his children.

2. The applications had all been refused on the grounds that a) the Entry Clearance Officer (ECO) had not accepted that the relationship between the First Appellant and Mr Shah was genuine and subsisting, b) they had failed to demonstrate that they would be adequately maintained without recourse to public funds and c) they would be adequately accommodated.
3. When the matter came before the First-tier Tribunal it found there to be "ample evidence" that this was a marriage of some sixteen years standing and that there was no reason to doubt the intentions of the parties. There has been no challenge to that finding and it is preserved.
4. In respect of maintenance and accommodation the Tribunal heard evidence from a Dr Nasreen Sikander. She is the First Appellant's aunt. She gave evidence to the effect that the family would be living rent-free with her in her four bedroomed house and that she would in addition provide them with £500 per month by way of financial support until they were in a position to support themselves. This third-party support was offered to supplement the earnings, from paid and self-employment, of the sponsor Mr Shah.
5. The parties were in agreement that the task of the Tribunal was to determine whether the parties would be maintained "adequately" and this was to be assessed in light of the "income support comparator", as approved in KA and Others (Adequacy of maintenance) Pakistan [2006] UKAIT 00065. The agreed figure was that the family needed to show a total income of £258.83 per week, or £1121.60 per month. It was accepted that Mr Shah earned £210 net per week from his employment at Tesco. It was not accepted that any weight could be attached to his claimed earnings from self-employment. A letter from his accountant was found to be "extraordinary" since it failed to mention something disclosed in his own evidence, namely that his business had been part owned by someone else who had a 25% stake. In respect of Dr Sikander's evidence the Tribunal simply states:

"What she is offering is not only £500 per month, equating to £115 per week, but rent and tax free accommodation indefinitely. Such support is only intended to be transitional, and I am not prepared to accept that such an open ended arrangement that she proposes is realistic"

Considering all of these sources of income the Tribunal was not satisfied that the parties would be adequately maintained.

6. The determination concludes by addressing accommodation in the following terms: “Although there is no up to date inspection report, the original one, while not completely satisfactory, does show Dr Sikander’s premises are commodious. However, it does appear that at the date of decision, the appellants could not satisfy the requirements as to accommodation”. The appeal was dismissed under the Rules, and Article 8.
7. Permission to appeal was sought, and granted, on the following grounds:
 - i) In describing the letter from the accountant as “extraordinary” the Tribunal has failed to give any reasons for that conclusion, or adequately explain why the contents could not be relied upon;
 - ii) The approach taken to third party support was wrong in two material respects. The First-tier Tribunal erred in law in stating that such support could only be “transitional” (ie short term). Reliance is placed on Mahad [AM (Ethiopia)] v ECO [2009] UKSC 16. Further there was no reasons given as to why the evidence of Dr Sikander could not be accepted.
 - iii) In respect of accommodation the reasoning is unclear; the Tribunal accept that the property was “commodious” but dismissed the appeal on this ground nevertheless.

Error of Law

8. I am satisfied that the First-tier Tribunal erred in its approach to the third-party support offered by Dr Sikander. She is the First Appellant’s aunt. She is close to her niece and has given unchallenged evidence that she fully supports her in her decision to move to the UK. In support of the applications she provided a sworn sponsorship undertaking, provided copies of her bank statements and confirmed that she would be willing to support them for as long as it takes for them to be self sufficient. She is a practising semi-retired GP who earns approximately £60,000 per annum, combined income from her NHS pension (£24,000) and continued earnings (£36,000). She has no dependents, her only son being an adult with his own job. He lives with her in her large mortgage-free home. In her oral evidence to the First-tier Tribunal she confirmed that she was able and willing to provide accommodation, plus £500 per month in supplementary income. There has never been any dispute that Dr Sikander had, and continues to have the means to provide this support. She has consistently stated that she wishes to provide it, and has, in her unchallenged oral evidence to the First-tier Tribunal, confirmed that the sum she had in mind was £500. All of this is compliant with Mahad. I find that the First-tier Tribunal erred in failing to give reasons why Dr Sikander’s evidence should be rejected. I

am further satisfied that there was a material misdirection in law. If by “transitional” the First-tier Tribunal meant “short term”, this is not the test in Mahad, in which the Supreme Court expressly accepted that the Rule could be met with recourse to long-term third party support. It is difficult to see on what basis the First-tier Tribunal found this proposed arrangement to be “unrealistic”. Mr McVeety confirmed that he had no challenge Dr Sikander’s credibility as a witness. As Mr Brown pointed out, as a practising doctor she was a professional of standing and her evidence was capable of attracting significant weight. I find that the First-tier Tribunal did err in law and that the decision in respect of maintenance must be set aside. On a balance of probabilities I am satisfied that the maintenance requirement of the Rule was met at the date of decision.

9. It follows that I do not need to address the approach taken to the Sponsor’s earnings from self-employment.
10. The reasoning in respect of accommodation is unclear to the extent that the Appellants are unable to understand why they have lost. Indeed Mr McVeety acknowledged that he was unable to understand why the Respondent had won. The decision in respect of accommodation is therefore set aside. The evidence in the property inspection report, submitted with the application and apparently accepted by the First-tier Tribunal, was that Dr Sikander’s home has four bedrooms, a dining room and a living room. There was further evidence produced at the First-tier Tribunal hearing that the basement had been converted to include a gym, although for present purposes that can be disregarded. At the date of decision she was living there with her adult son, each of them occupying a bedroom. The ECO, noting this, found the remaining two bedrooms were not suitable accommodation for this family, since the “housing act” prohibits children over 12 sharing a room with a child of a different gender. The Second Appellant was at the date of decision an eight-year old boy, the Third Appellant a twelve-year old girl. I was provided with the relevant part of the Housing Act 1985. Section 325 reads as follows:

325 The room standard

- (1) The room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as husband and wife must sleep in the same room.
- (2) For this purpose –
 - (a) children under the age of ten shall be left out of account, and
 - (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a bedroom or as a living room.

11. It will be apparent from this that the ECO was wrong on two counts. First of all the house will not be overcrowded where there is additional sleeping accommodation in a room "normally used in the locality as a living room". The living room could therefore be counted. Secondly the Appellant under the age of ten should be left out of account. There is really no sensible construction of this provision that could lead to the conclusion that a four bedroomed house with a dining room, living room and gymnasium would be overcrowded if occupied by six people. I am satisfied that there was adequate accommodation.

Decisions

12. The decision of the First-tier Tribunal contains an error of law and it is set aside.
13. I re-make the decision in the appeals by allowing them under the Immigration Rules.
14. I make no direction for anonymity because neither party has requested one and on the facts I do not consider such an order to be necessary.

Deputy Upper Tribunal Judge Bruce
3rd June 2015