



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/00461/2013

**THE IMMIGRATION ACTS**

Heard at Hatton Cross  
On 14 March 2014

Determination Promulgated  
On 27 March 2014

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR SHAKEEL AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Singer, Counsel, instructed by Haq Hamilton Solicitors  
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Thorne promulgated on 9 November 2013 dismissing his appeal against the decision of the respondent dated 5 November 2012 to refuse him entry

clearance to the United Kingdom to join his parents pursuant to paragraph 301 of the Immigration Rules.

2. This matter seriously came before me on 19 December 2013 when, for the reasons set out in the decision of that date, I found that there was an error of law in the determination of Judge Thorne and gave directions as to how the decision was to be remade. A copy of that decision is attached to this determination as an annexe
3. The sole issue here is, as both Ms Everett for the respondent and Mr Singer for the appellant accepted, a narrow one: does the sponsor have sufficient income to support the appellant such that there would be a no additional recourse to public funds. It is not disputed that this is to be determined in line with Ahmed [2013] UKUT 84 (IAC) at [11]:-

11. As adequacy of accommodation was out of the picture following the earlier decision, the present hearing was concerned solely with the maintenance requirement. Expressed mathematically, the formula to be fulfilled is

$$A - B \geq C^{[1]}$$

where:

A is the projected income

B what needs to be spent on accommodation and

C the income support (or equivalent) figure (which we term in this decision "the benefit threshold")

4. Both representatives were in agreement that this was the proper approach to be followed. They were also agreed that it was appropriate as the starting point when assessing the sponsor's income to average it over the six months prior to the date of decision and, for the purposes of benefit calculations, to express that figure as a weekly amount.
5. The sponsor has two sources of employment: Compass Group Security and G4S Security. In addition to that, he is in receipt of child benefit at the rate of £188.40 per month. That is not in dispute.
6. As Mr Singer accepted, the total figures for income given in the schedule include payments which straddle the date of decision given that the sponsor is paid in arrears. It is evident from the papers from G4S that the pay is calculated on a calendar month basis and then paid approximately fifteen days into the next month.
7. I do not consider that these sums could therefore be taken into account given that the income, although relating to a period before the date of decision was not in fact received by the sponsor prior to that date. On that basis, the relevant income for the 6 month period is £13,410.15 which amounts to £515.78 per week assuming 6 months is 26 weeks.

8. From this weekly income has to be deducted the applicable rent which in this case is £330 per fortnight or £165 per week. Therefore on the basis of the formula in Ahmed, it is necessary for the applicable level of income support (or equivalent) figure must be greater than £350.78.
9. Ms Everett submitted that the appropriate basis for the benefit threshold should be that established in KA (Pakistan), that is, adding the family premium and the relevant premium for each child under 18 (including the appellant) to the applicable amount of income support payable to a couple.
10. Mr Singer submitted that on the contrary, the appropriate method of calculating the benefit threshold is adding the child tax credits payable in respect of the children to the income support payable to the couple, as family premiums in respect of children are no longer payable.
11. The starting point with any assessment must be the level of benefits to which the particular family in question would be entitled as at the date of decision. The rationale underlying KA(Pakistan) is that no one should be expected to live on an income less than what has been established by the government as the minimum level on which an individual ( or a family) can be expected to live. That, certainly at the time of KA (Pakistan) was calculated by reference to income support levels. As has been recognised, the situation has now moved on since 2004.
12. As currently constituted, the family premium which was payable under income support in respect of each child under 18 and which was taken into account in KA (Pakistan) has not been available since April 2004 for new claimants unless the claim began before 6 April 2004 and the child was included in that claim before 2004 and he had not yet been awarded child tax credit.
13. On that basis it would be an entirely artificial exercise to consider the income support figure on the basis of adding the applicable amount for a couple to the child premium amounts payable for each of the three children who were in this case part of the family and were aged under 18.
14. In the circumstances therefore I am persuaded that, in line with Ahmed the appropriate means for calculating the relevant amount of support that is of the benefit threshold, is on the assumption that child tax credit would be payable to the family.
15. The applicable figures derived from the grounds of appeal (subject to the correction made by Mr Singer to the amount of income support) are:

Income support	£111.45
Child tax credit	£170.83
Child benefit	£60.50

**Total** **£342.78**

16. On that basis, in this case, applying the correct benefit threshold, and taking into account the arrival of the appellant, the sponsor has sufficient income available such that he satisfies the Immigration Rules as to the adequacy of maintenance and accommodation, it being accepted that there is sufficient accommodation available to the family which is not overcrowded.
17. Accordingly, for the reasons set out above the determination of the First-tier Tribunal did involve the making of an error of law and I set it aside. I remake the determination by allowing the appeal under the Immigration Rules.
18. As I have allowed the appeal under the Immigration Rules, it is unnecessary for me to consider whether the appeal should be allowed on article 8 grounds, or on any other grounds.

### **SUMMARY OF CONCLUSIONS**

- 1 The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I remake the decision by allowing the appeal under the immigration rules.

Signed

Date; 25 March 2014

Upper Tribunal Judge Rintoul

**APPENDIX - ERROR OF LAW DECISION**



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

Appeal Number: OA/00461/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 December 2013**

**Determination Promulgated**

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**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**SHAKEEL AHMED**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr J Singer, Counsel, instructed by Haq Hamilton Solicitors  
For the Respondent: Mr J Whitwell, Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Thorne promulgated on 9 September 2013, dismissing the appellant's

appeal against the decision by the respondent made on 5 November 2012 to refuse him entry clearance to the United Kingdom to join his mother and father (“the sponsor”) pursuant to paragraph 301 of the Immigration Rules.

2. The appellant was born on 1 April 1995 and is a citizen of Pakistan. His father, Mukhtar Ahmed, lives and works in the United Kingdom. The appellant’s mother, Zulekha Ahmed and three of the appellant’s siblings live in London.
3. The appellant’s case is that as at the date of decision his father earned sufficient money to maintain him and provide accommodation for him in the United Kingdom with the rest of the family which would be adequate and this would be achieved without there being additional recourse to public funds.
4. Although the application was lodged on 16 August 2012, it was not until 26 November 2012 that the respondent refused the application. The respondent concluded:-
  - (i) in the absence of any mention of the appellant’s mother, that he was not seeking to join or accompany her;
  - (ii) that the family would require a total of £453.80 per week in order to maintain them in line with income support rates that, taking this with the £165 rent per week that the sponsor would therefore require £618.80 per week to support his family, equivalent to £32,177.60 income, considerably more than the £2,333 per month net income claimed;
  - (iii) that he was not satisfied that the sponsor could maintain and accommodate the appellant without recourse to public funds.
5. The appeal against that decision came before Judge Thorne sitting at Hatton Cross on 23 August 2013. The appellant was represented on this occasion by the sponsor but not by any legal representative. The respondent conceded the relationship between the appellant and his mother and that the only live issues related to accommodation and maintenance [16]. Judge Thorne, after hearing evidence from the sponsor and considering documents adduced by him found:-
  - (i) that there was no adequate evidence such as an independent housing report of the availability of suitable accommodation for the appellant in the UK[26];
  - (ii) that on the sponsor’s evidence he would have been residing with his wife and four children and, at DWP rates, would require net yearly income of £32,177.60 for maintenance substantially greater than his stated gross income of £29,927.40 [28];
  - (iii) there was no reliable evidence of the sponsor receiving any money from his elder son or that the credit surpluses in the bank accounts were genuinely funds available to him;

- (iv) that the decision was not in breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention [32]; and
  - (v) therefore the matter fell to be dismissed on all grounds.
6. The appellant and sponsor then instructed Haq Hamilton Solicitors who applied on the appellant's behalf for permission to appeal submitting:-
- (i) that the judge made a material error in failing to apply **KA and Others (Adequacy of maintenance) Pakistan [2006] UKAIT 00065** and the principles as laid down in **Uvovo (00 TH 01450)**; [3];
  - (ii) that the judge made a material error of fact with respect to the correct calculations of the theoretical income in respect of the relevant level of income support given that the relevant level was not by calculating the number of children dependent for whom an allowance is payable in respect of income support but rather on the basis that, as is now the case, the applicable level of child tax credit payable to a family where both parents are in receipt of income support [4] that figure being [17] £170.83 per week, including child benefit, that would be paid to the family would be £337.28 per week [22];
  - (iii) that even accounting for the rent paid [24] the sponsor's net income was £376.84 a week and therefore there would be no additional recourse to public funds were the appellant to join his family;
  - (iv) that the respondent had failed properly to apply Section 55 of the UK Borders Act [28].
7. On 6 November 2013 Upper Tribunal Judge Latta granted permission, stating that:
- "It is arguable that the First-tier Tribunal may have erred in law in its assessment of whether the appellant would be adequately maintained and by failing to give adequate reasons for finding that the accommodation requirements of the Rules were not met".
8. The respondent replied to that pursuant to Rule 24 stating that the judge had made reasoned findings that the income was not sufficient and that there was apparently an unchallenged finding on accommodation being inadequate.
9. Mr Singer submitted that the judge had erred with respect to his assessment of the adequacy of maintenance. Firstly, as there was no indication in the refusal notice that what was in issue was the size of the accommodation but rather whether there was sufficient funds to meet the cost. He submitted further that the judge had erred in there requiring to be or appearing to require a property report. Mr Whitwell accepted that the judge's analysis of the accommodation was flawed in that it appeared not to take into account the fact that there were three rooms available and that they would accordingly not be statutorily overcrowded. He submitted that,

however, this error was not material as the judge's analysis of the income available to the family was one open to him.

10. I am mindful of the fact that the sponsor for reasons best known to himself was not legally represented before Judge Thorne, a fact which, given the complexity of the issues regarding the calculation of benefit was at best ill-advised.
11. The respondent appears to have reached the figure quoted for the relevant level of income support on the basis of a calculation assuming that there would be an allowance under income support for each of the appellant's four siblings as they were living with the parents. That assumption was incorrect and as was accepted by the judge that the older child was not living with the family and second because at the relevant date the child was over the age of 18. It is also unfortunate that the judge did not refer either to **Ahmed (benefits: proof of receipt; evidence) [2013] UKUT 00084 (IAC)** or for that matter **Yarce (maintenance: benefit) [2012] UKUT 00045 (IAC)** given that it is generally accepted, the situation and the means by which benefits are calculated has moved on and become considerably more complex since the decision in **KA** was promulgated. The correct approach is set out in **Ahmed** at 11:

11. As adequacy of accommodation was out of the picture following the earlier decision, the present hearing was concerned solely with the maintenance requirement. Expressed mathematically, the formula to be fulfilled is

$$A - B \geq C^{[1]}$$

where:

A is the projected income

B what needs to be spent on accommodation and

C the income support (or equivalent) figure (which we term in this decision "the benefit threshold")

12. In this case, the sponsor's net income plus the child benefit paid should have been added together, the cost of rent and council tax deducted and the benefit threshold calculated. In **Ahmed** the Upper Tribunal said at [27]:-

This calculation in the form put forward [difficulties using figures in respect of allowances for each dependent child] is not without its conceptual difficulties, although they may be more theoretical than real. The system of support for families on benefit with children has largely moved on and will continue to do so. The calculations as submitted to us are sufficiently consistent for **KA** for present purposes and we are satisfied that other, more contemporary, ways of approaching the calculation (such as using child tax credit figures) would not lead to a materially different income when construing the benefit threshold. However, while we are satisfied with the present method of carrying out the calculations is a valid one in the circumstances of this case, we are not intending to hold it out as a model or to exclude other methods of calculation in respect to the **KA** principle while perhaps being more consistent with the reality of the benefit system as it now is or indeed how it may evolve in the future.



13. In fairness to the respondent and to Judge Thorne, none of this was put to him but it is incumbent on a judge to follow relevant case law. That said, I am satisfied that he may, as the grounds put forward, have misdirected himself with respect to the means by which adequacy of maintenance is calculated in failing to apply **Yarce** or **Ahmed** as noted above. I am satisfied also that an error of fact arose in the calculation of the relevant DWP figure in that the judge has failed to give reasons why he adopted that calculation (including an additional child) rather than other models as canvassed in **Ahmed**. That does not, however, mean that the error was material but turning to the alternative method of calculation, that is on the basis of child tax credit, set out in the grounds of appeal at [21].
14. The net income for the sponsor is unclear given that the P60s given relates to the tax year ending 5 April 2012, more than six months before the date of decision. There was little evidence put before the Tribunal as regards the sponsor's income as at the date of decision. There was only partial coverage of subsequent income by means of wage slips. Taking the figures given by the sponsor at their highest, the income disclosed was £29,927.40. On the basis of the tax and national insurance rates payable in the tax year 2011/12 the gross income of £29,927.40 equates to a net income of £436.77 per week. To that must be added child benefit of £60 a week. It is not necessary to include the figure for child benefit in this given that this figure would also have to be added to the calculation of the relevant level of benefit payable. The difference in income is therefore even on the figures given to the judge, greater than the rent payable.
15. It follows on this basis that the judge could have reached another figure with regards to income even on the basis of the figures that he accepted.
16. In the circumstances, I am satisfied that the judge's error with regard to the calculation of income was material in that there could, on the basis of the figures before him, have been another outcome.
17. It is therefore necessary to remake the decision with respect to the calculation of the adequacy of income with regard to the date of decision. It is not, however, possible to do so on the basis of the material supplied I therefore direct that the matter be reconvened for a further hearing on this issue in accordance with the directions which follow.

### **Directions**

- 1 That the appellant prepare an schedule of the sponsor's income and expenditure for the period of the six months prior to the date of decision, including details of any benefits received by him and/or his wife and children;
- 2 The schedule is to be accompanied by an indexed bundle of documents establishing the various items of income and expenditure set out in the aforementioned schedule; and, copies of the relevant bank statements including (if relied upon) savings;

- 3 These documents are to be served on the respondent and on the Upper Tribunal at least 5 working days before the next hearing.

Signed

Date: 14 January 2014

Upper Tribunal Judge Rintoul