



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16009/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12th July 2016

Decision & Reasons Promulgated
On 14th July 2016

Before
UPPER TRIBUNAL JUDGE SMITH

Between
MR SAJID RAMZAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr N Bajwa, Counsel instructed by A Bajwa and Co solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant appeals the decision of First-tier Tribunal Judge Callow promulgated on 30 November 2015 ("the Decision") dismissing his appeal against the Respondent's decision dated 19 November 2014 refusing him entry clearance as the partner of Ms Ghuman ("the Sponsor") who is a British citizen present and settled in the UK. The Sponsor has a number of children from a previous marriage who were aged between fifteen and twenty-five years at the date of the appeal hearing. Those children include the Sponsor's disabled child in relation to whom the Sponsor is entitled to and receives carer's allowance.
2. The Judge accepted that the relationship between the Appellant and the Sponsor is genuine and subsisting ([13] of the Decision). However, the Respondent refused the application also on the ground that the Sponsor could not show a sufficient income to satisfy the requirement for adequate maintenance and accommodation. Permission

to appeal was granted on the basis that the Judge had failed to set out the calculations relied upon as showing that the Sponsor's income was insufficient. The appeal comes before me to determine whether the Decision contains a material error of law and, if I so find, to either re-make the Decision or remit to the First-tier Tribunal for re-hearing.

Submissions

3. Mr Bajwa submitted that the Sponsor is exempt from the requirement to satisfy the minimum income requirement of £18,600 set out in the post 2012 Immigration Rules and that this is determinative of the appeal. He relied on E-ECP.3.3(a) of Appendix FM and pointed out that the Sponsor is in receipt of carer's allowance and so is exempt from that requirement. As First-tier Tribunal Judge Fisher pointed out when refusing permission to appeal, though, that is not the issue. The issue is that identified at [14] of the Decision as follows:-

"As to the financial requirements however, the appellant has failed to discharge the responsibility that rests with him. While it is obviously accepted that the payment of a Carer's Allowance exempts the appellant from providing specified evidence of a specified gross annual income of at least £18,600, it has not been shown that the sponsor is able to maintain and accommodate herself, the appellant and the sponsor's dependants adequately in the UK without recourse to public funds as at the date of the respondent's decision. No mention was made of this issue in the sponsor's statement prepared for the purpose of the hearing and which was not addressed in her evidence in chief. The sponsor, as was acknowledged by Mr Bajwa, is totally reliant on public funds. She is Zarqa's carer. Mr Lowdon's [the presenting officer] calculations showing that the sponsor fell woefully short of the required minimum to satisfy the rule in question had not been countered and were correct."

Paragraph E-ECP.3.3(b) provides that in addition to demonstrating exemption by showing receipt of the relevant allowance the applicant "must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse of public funds".

4. I invited Mr Bajwa on a number of occasions to point me to the evidence which he said showed the adequacy of monies available to the Sponsor to adequately maintain the Appellant in addition to continuing to finance her other existing obligations. He referred me to the large number of bank statements in the bundle but did not direct my attention to any particular figures. He submitted that the Sponsor has accommodation available to her and therefore the Appellant would have a roof over his head. That does not though deal with the maintenance element. He submitted that the Appellant would not in any event have recourse to public funds as he would not be entitled to benefits. That though ignores the question of whether the Sponsor would be able to support the Appellant without any increased reliance on public funds which is the relevant test. Mr Bajwa also submitted that the Appellant has skills as a qualified mechanic and so could be expected to find a job on arrival which would provide adequate income to support himself. There is though no evidence of a job offer. He may be lucky enough to find a job very swiftly following arrival but

that remains speculative. The Respondent and the Judge were entitled (indeed required) to consider the Appellant's circumstances on the evidence before them.

5. I also directed Mr Bajwa's attention to calculations which appear on the file which appear to set out the Sponsor's income. Mr Bajwa did not dispute those calculations. Indeed they appear to be the calculations which he presented to Judge Callow. Those show that the Sponsor is in receipt of a weekly figure of £185.38 broken down as follows:-

"Child benefit	£20.70
Carers allowance	£62.10
Child tax credit	£57.58
Income support	£45"

The Sponsor also has her council tax paid by the local authority.

6. Mr Kotas accepted that it would have been preferable for the Judge to have set out the Presenting Officer's calculations with some detail of what was meant by "woefully short". He pointed out however that the burden is on the Appellant to show that the Sponsor has adequate funds available to her to maintain him, herself and her other dependants. He referred me to the income support figures which are generally viewed as a yardstick for the adequacy of maintenance and which would apply on the facts of this case. Those are:-

"Couple	£113.70
Dependent child	£66.33
Family/lone parent premium	£17.45
Disabled child	£59.50
Carer	£34.20"

That gives a total of £291.18 per week. He therefore submitted that even if the failure to provide reasons were an error, it would not be material.

7. In reply, Mr Bajwa submitted that if the Judge had in mind the minimum income threshold when determining the issue of adequacy of maintenance, this too would be an error as the Sponsor is exempt. However, there is no reference in the Decision to that threshold and it is clear from [14] of the Decision as set out at [3] above, that the Judge accepted that this threshold does not apply.

Decision and reasons

8. It is common ground that the Sponsor is exempt from the requirement to show that she has access to £18,600 as a minimum income (paragraph E-ECP.3.3(a) of the Rules). However, the Appellant is still obliged to show that the Sponsor has adequate funds to maintain and accommodate him. I accept Mr Kotas' submission that the burden is on the Appellant.
9. I accept also, as Mr Kotas submitted, that it would have been preferable if the Judge had set out at least the basic calculations which led him to the decision that the Sponsor's income was "woefully short". Even if that amounts to an error of law,

however, there remains an issue of materiality. If the evidence and any calculations in fact show that the Judge was correct in that view, there would be little point in the appeal proceeding further. This is an appeal against an entry clearance decision and as such Judge Callow (and I) could not take into account evidence post-dating the Respondent's decision (section 85A(2) of the Nationality, Immigration and Asylum Act 2002). I turn therefore to consider the issue of materiality.

10. The case law in place prior to the introduction of the minimum income threshold in July 2012, encapsulated in the decision of KA and others (Adequacy of maintenance) Pakistan [2006] UKAIT 00065, applies the yardstick of the income support which would be available to the Appellant and Sponsor as well as any other dependants if the Appellant were permitted to enter. The wording of E-ECP.3.3(b) is virtually identical to that in paragraph 271 of the previous rules which governed the entry of those seeking to come to the UK as a spouse or civil partner. I can see no reason, therefore, why that would not still apply to E-ECP.3.3(b) and nor did Mr Bajwa make any submissions that it did not. Insofar as that remains the appropriate test, I have already set out the calculation as to the level of income support which would apply in this case at [6] above. By way of comparison with the figures at [5] above, it is evident that there is a substantial gap between the two totals.
11. In any event, the onus is on the Appellant and the Sponsor to show that there is adequate maintenance. Even if income support were no longer the yardstick, the Sponsor's bank statements on which the Appellant relies do not explain how the Sponsor would have sufficient income. The Sponsor's witness evidence does not deal with this issue. The bank statements show frequently low balances. There are also unexplained credits, often of quite large amounts (which may be from the Sponsor's children). In order for the Appellant to succeed, the Sponsor would need to show how her income is sufficient to meet the additional maintenance obligation which the Appellant's arrival would create. Alternatively, the Appellant would need to show by proper evidence that he has a job to come to on arrival which would cover his maintenance and thus avoid that issue. Whatever may be the position in future applications, however, the position in relation to this application is that the evidence does not show that the Appellant can meet rule E-ECP.3.3(b) and the Judge was right so to find. Any error in failing to set out the calculations therefore is immaterial.

Decision

I am satisfied that the Decision of the First-tier Tribunal does not contain a material error of law. The Decision of First-tier Tribunal Judge Callow promulgated on 30 November 2015 dismissing the Appellant's appeal is therefore maintained.



Signed
Upper Tribunal Judge Smith

Date 13 July 2016