Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/06979/2012
OA/09875/2012

THE IMMIGRATION ACTS

Heard at Field House
On 6 December 2013
Prepared 6 December 2013

Determination Promulgated
On 20 December 2013

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

LA

First Appellant

KA

Second Appellant

(Anonymity Order made)

and

ENTRY CLEARANCE OFFICER - KINGSTON

Respondent

Representation:
For the Appellants: Ms A. Heller, instructed by Sunrise solicitors
For the Respondent: Mr Nath, Senior Presenting Officer

DETERMINATION AND REASONS

Introduction

1. An anonymity order was made by the First-tier Tribunal and there has been no application before me by either party or by any third party to discharge that order. The anonymity order is therefore maintained. Such order is to remain in place unless or until this Tribunal, or any other appropriate Court, directs otherwise. As such, no

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report of these proceedings shall directly, or indirectly, identify the appellants. Failure to comply with this order could amount to a contempt of court.

2. The appellants are both citizens of Jamaica. The first appellant, born 26 March 1981, is father to the second appellant, born in 2007. The first appellant applied for entry clearance to settle in the United Kingdom as the husband of a person present and settled here, KT, pursuant to paragraph 281 of the Immigration Rules. The second appellant applies pursuant to paragraph 297 of the Immigration Rules as the child of a person present and settled in the United Kingdom (although the ECO wrongly dealt with the application pursuant to paragraph 301 of the Rules). Both applications were refused in decisions made by an Entry Clearance Officer on 1 March 2012. In reality the second appellant's application is entirely reliant upon that of the first appellant.

3. The Entry Clearance Officer refused the first appellant's application on both maintenance and accommodation grounds, pursuant to paragraphs 281(iv) and (v) of the Immigration Rules. The First-tier Tribunal heard the appellants' appeals and dismissed them in a combined determination promulgated on 31 July 2013. It settled the issue of accommodation in the appellants' favour, concluding as it did so that the appellants would be accommodated in a residence owned by the sponsor's sister. As to the issue of maintenance, the tribunal observed that the documentation before it lacked coherence and clarity and that having considered it, along with the evidence of the sponsor and the sponsor's sister, it had not been demonstrated to the balance of probabilities that the sponsor's income surpassed the appropriate threshold. The tribunal also gave consideration to Article 8 ECHR and concluded that any interference with the appellants' family life caused by the decision of the Entry Clearance Officer would be proportionate to the legitimate aim pursued.

Error of Law

4. The appellants were granted permission to appeal to the Upper Tribunal by way of a decision of First-tier Tribunal Judge Warren L. Grant dated 9 September 2013, in the following terms:

> "1. The appellants seek permission to appeal, in time, against a decision of the First-tier Tribunal promulgated on 31 July 2013 whereby he dismissed the appellants' appeals against the decision of the Entry Clearance Officer - Kingston to refuse their applications for leave to enter the UK as dependent spouse and child respectively of a person present and settled in the United Kingdom.
>
> 2. The grounds of application assert that the First-tier Tribunal Judge misdirected himself when considering the adequacy of the funds available for the maintenance of the appellants at the date of the decision and as such disclosed an arguable error of law. His consideration of Article 8 issues seems confused and he does appear to have applied a test of exceptionality when assessing proportionality. All grounds are arguable."

5. Thus the appeal came before me.

6. At a hearing on 18 October 2013 Mr Nath agreed that the First-tier Tribunal's determination contained an error of law in relation to its consideration of the maintenance requirement of the Rules. More particularly, it was accepted that the First-tier Tribunal had failed to make material findings on relevant matters, i.e. (i) the availability of third party support, (ii) the income of the appellant from student grants/loans.

7. For these reasons it was agreed that the determination of the First-tier Tribunal should be set aside and that the decision under the appeal should be remade by the Upper Tribunal.

8. Unfortunately, as a consequence of the chaotic manner in which the appellants presented the documentary evidence to the First-tier Tribunal, which included over 200 pages of documentation which had not been indexed or paginated, it proved impossible to proceed immediately to remake the decision. In all the circumstances, with the agreement of the parties, I concluded that it was appropriate to adjourn the hearing of the appeal to a later date.

Remaking of Decision

9. When the matter came back before me on 6 December 2013 the appellants provided properly indexed and paginated bundles of evidence; including evidence that had been before the First-tier Tribunal and a supplementary bundle of evidence, which was admitted with the consent of Mr Nath. Ms Heller had also provided a helpful skeleton argument.

10. The only issue left before the Upper Tribunal is that of maintenance, the ECO not having challenged the decision of the First-tier Tribunal made in relation to the issue of accommodation. At the outset of the hearing before the Upper Tribunal Mr Nath helpfully accepted a number of the matters set out by Ms Heller in her skeleton argument:

    (a) The income support level for a couple and a child of the second appellant's age totalled £804.60 per month as of the date of the Entry Clearance Officer's decision;

    (b) The rent paid by the sponsor for her University accommodation was £673.97 per month;

    (c) The sponsor had loan commitments of £194.88 per month;

    (d) There were no costs for the appellant and sponsor associated with living in the sponsor's sister's accommodation; including no requirement for them to pay rent or to assist with payment of council tax. This situation would not change after the appellants' arrival in the United Kingdom;

    (e) The sum of the hypothetical income support figure, plus the University rent and the sponsor's loan commitments amounts to £1,673.45 per month.

11. After hearing evidence from the sponsor Mr Nath also agreed the following matters:

    (a) The sponsor earned £917.66 per month from employment at the relevant time;

    (b) She received a student support loan equivalent to £291.42 per month, a grant equivalent to £444.08 per month and bursaries equivalent to £290.01 per month.

12. Although Mr Nath agreed the matters identified above, he did not concede that the appellants met the requirements of the Immigration Rules; asserting that there were two costs not reflected in the figures, which also required consideration. I shall take these in turn.

13. The first additional relevant cost identified by Mr Nath as not having yet been taken into account is the cost of the sponsor's travel to and from University; it being the case that the appellants and sponsor will live together with the sponsor's sister after the appellants arrival here. At the date of the Entry Clearance Officer's decision the sponsor was living in University accommodation; however, it was the sponsor's intention, as of that date, to live with her sister after the appellants' arrival here.

14. The sponsor gave evidence that she was required to attend the University three days per week. Mr Nath did not seek to challenge this evidence. Mr Nath identified the daily cost of travel by reference to figures in the sponsor's bank statements relating to dates when the sponsor had previously undertaken the journey to and from University from her sister's house. The travel cost on these occasions was £34.65 per day. If one uses the figure of £34.65 as the daily travel rate, the cost of the sponsor's travel, if she were to attend University three days per week, would be £450.45 per month.

15. It is important to recognise, however, that in this scenario, as Mr Nath accepted, the sponsor would not have to pay her University rental costs of £673.97 per month because she would be permanently living with her sister and travelling to the University as and when required. Rather than adding to the sponsor's costs, travelling from her sister's accommodation to University, as opposed to renting accommodation at the University, reduces the sponsor's monthly expenditure by £223.52.

16. The second potential additional items of expenditure relied upon by Mr Nath are the incidental costs associated with the sponsor's studies, other than travel costs and those costs already taken into account in Ms Heller's calculations. The example identified by Mr Nath was the costs of books and materials. The sponsor gave oral evidence to the effect that she has no such incidental costs. As to the purchase of books and other materials, the sponsor stated that all of her course materials are provided free via an online University portal, which can be accessed from any computer. This seems to me to be perfectly plausible and credible evidence, particularly when considered in the light of the sponsor's evidence in the round.

17. Given the matters accepted by Mr Nath, and my findings on the two potential items of expenditure upon which there was no express agreement, it is plain that the

appellants meet the maintenance requirements of the two relevant Immigration Rules by a substantial margin. The sponsor's relevant costs for the purposes of the calculation of the maintenance requirement of the Immigration Rules are £1449.93 per month and her income, £1943.17 per month. She would also meet the maintenance requirement of the Rules even if she were to remain living in rented University accommodation.

18. Both of the appellants' appeals therefore fall to be allowed on the basis that the decisions made by the Entry Clearance Officer refusing entry clearance were not in accordance with the Immigration Rules. The first appellant meets the requirements of paragraph 281 of the Rules and the second appellant the requirements of paragraph 297.

Decision

For the reasons given above the determination of the First-tier Tribunal is set aside.

Upon remaking the decision, the appeals of both appellants are allowed on the basis that the decisions of the Entry Clearance Officer were not in accordance with the Immigration Rules.

Fee Award

Having allowed the appeals of both appellants, I make fees awards in their favour. The respondent is to pay to the appellants the total sum of the fees occasioned by them when lodging their appeals to the First-tier Tribunal.

Signed:

Upper Tribunal Judge O'Connor
Date 13 December 2013