



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

Appeal Numbers: OA/22387/2012
OA/22388/2012

THE IMMIGRATION ACTS

Heard at Bradford

On 9 January 2014

Determination

Promulgated

On 22 January 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**TAMADUR MUKHTAR
MOKHTAR SIDDIG HARI BOSH**

Appellants

and

ENTRY CLEARANCE OFFICER - CAIRO

Respondent

Representation:

For the Appellants: Mrs S Daley, instructed by Howells, Solicitors

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Tamadur Mukhtar (date of birth: 18 February 1984) and Mokhtar Siddig Hari Bosh (date of birth: 17 August 2010) are citizens of Sudan. By a decision dated 19 November 2013, Deputy Upper Tribunal

Judge Dearden set aside the First-tier Tribunal decision of Judge Fisher and directed a resumed hearing.

2. I was much assisted by the very helpful calculations which Mrs Daley of Counsel had included in her skeleton argument. I was also grateful to Mrs Pettersen, for the respondent, who did not seek to challenge those figures. The problem in this appeal can be stated quite briefly. The sponsor has a variable income. The number of weeks (for example twelve, eight, sixteen) which one takes in order to calculate his net average weekly income produces differing results with the consequence that, by reference to one period of time his net average weekly income exceeds the sum which he and the appellants would receive by way of state benefits whilst, by reference to other periods, he falls just short of that threshold. As Mrs Daley pointed out, there was no judicial guidance or any indication under HC 395 as to the period by reference to which the calculation should be made.
3. It is accepted by both parties that the appellants and the sponsor cannot choose to live on an income which is below the income support threshold. However, the Immigration Rules which these appellants had to satisfy are concerned with the likelihood in the future of the family living without recourse to public funds; to that extent, historic data relating to wages are only relevant insofar as they throw light on the likely position in the future and after the appellants have joined the sponsor in the United Kingdom. There are also practical considerations. As I understand it, the sponsor would need to show a number of weeks of income below the income support threshold before he could apply for that or similar means-tested benefits. Applying the standard of the balance of probabilities, I find that he would be very unlikely to make such an application if his future wages follow a similar pattern to that in the past. If, for example, during one week his wages fell below the income support level it would hardly be worth his while making an application for benefit when he would be well aware that in subsequent weeks his income would be such as to render him ineligible for such benefits. The focus should, therefore, be on the ability of the appellants to satisfy the Immigration Rules and I find that they would be able to maintain themselves without having recourse to public funds because the sponsor would not apply for such funds.
4. Neither Mrs Pettersen nor the Entry Clearance Officer have argued that the appellants failed to meet any other part of the relevant Immigration Rules. In the circumstances, I therefore allow the appeal in respect of the Immigration Rules.

DECISION

5. These appeals in respect of the Immigration Rules are allowed.

Signed

Date 21 January 2014

Upper Tribunal Judge Clive Lane