



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/07081/2012

THE IMMIGRATION ACTS

Heard at Field House
On 1 October 2013

Determination Promulgated
On 4 October 2013

Before

UPPER TRIBUNAL JUDGE COKER

Between

MOHAMMED ISHAQUE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Counsel instructed by Kalam Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal of Mohammed Ishaque who was born on 15 March 1994 and although in the refusal decision the Entry Clearance Officer carelessly stated that the appellant applied for entry clearance as a spouse and quoted the wrong paragraph number of the Rules, in fact he is a dependant child and it was agreed between the parties at the First-tier Tribunal that rather than remitting it back to the Entry Clearance Officer for consideration under the correct paragraph, the hearing should proceed as if the refusal had been under paragraph 297(iv) and (v). In fact during the

course of the hearing it was agreed that the only issue outstanding was the issue of maintenance. Judge Clayton dismissed the appeal under the Rules and under Article 8 having gone through the various documents and made findings as to their reliability.

2. Detailed grounds seeking permission to appeal were submitted setting out a calculation and, although permission to appeal was initially refused, it was subsequently granted with particular reference to an HMRC letter referring to amended tax credits for the year 2012 to 2013 which appears at page 7 of a bundle that starts with the skeleton argument that was submitted. That letter Mr Bramble had some concerns about because it was based on information that had been provided by the appellant's father to HMRC and he drew particular attention to a paragraph in that letter which says, "please tell us if your income goes up or it goes down, this helps us to keep your payments on the right track".
3. Mr Bramble however had not seen a letter which had been sent in by the appellant's solicitors after the conclusion of the hearing before Judge Clayton but before she determined the appeal. That is a letter dated 17 January 2013 from HM Revenue and Customs which confirms that the sponsor i.e. the father of the appellant's income for the tax year 2011/2012 accords with the information given in terms of tax credits and with the evidence that he gave at the appellant's hearing, namely he had an income of £8,253 for that year and paid tax of £154.80. Mr Bramble very properly agreed that the judge ought to have taken account of that letter and that it would have affected her assessment of the other documents. It is difficult to tell from the file whether Judge Clayton in fact saw that letter and she of course cannot be criticised for reaching the decision she did in the absence of such letter. However the fact remains that the content of that letter ought to have been taken into account.
4. Mr Bramble again very properly agrees that now on the basis of that evidence there is adequate maintenance to financially support the appellant without recourse to additional public funds. Going through the calculations that were provided by the appellant's solicitors in the grounds seeking permission to appeal to the First-tier Tribunal there were some disagreements with that to the extent that on the basis of income available the figure is £391.34, that the benefit threshold is £310.34 thus showing a surplus of £79 per week which means that there is adequate maintenance and thus the appeal is successful.
5. Accordingly, there is an error of law in the determination by Judge Clayton in that she failed to take account of a relevant document, albeit quite possibly a document of which she was not aware and as such the decision is set aside and I re-make the decision on the basis of the information I have set out above and allow the appeal.

Signed
Upper Tribunal Judge Coker

Date