THE IMMIGRATION ACTS

Heard at Field House   **Oral Determination**
On 16 July 2014   **Promulgated**
                                                  On 30 July 2014

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MANOREETHA NITHYANANTHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert, Counsel instructed by Tamil Welfare Association
                        (Romford Road)
For the Respondent: Ms A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka. Her sponsor and husband is Mr Paramasamy
    Nithyanannthan. She appeals against the determination of First-tier Tribunal Judge
    M P W Harris promulgated after a hearing at Hatton Cross on 23 January 2013 in
    which he dismissed the appellant's appeal against the decision of the Entry
    Clearance Officer in Chennai refusing to provide the appellant with entry clearance
    to join her spouse for the purposes of settlement. There was one issue before the
    judge and that was whether the appellant met the financial requirements for entry
    clearance. The significant Rule is Rule 6A which sets out the scheme:

"For the purposes of these Rules a person (P) is not to be regarded as having (or potentially having) recourse to public funds merely because P is (or will be) reliant in whole or in part on public funds provided to P's sponsor unless, as a result of P's presence in the United Kingdom, the sponsor is (or would be) entitled to increased or additional public funds save where such entitlement to increased or additional public funds is by virtue of P and the sponsor's joint entitlement to benefits under Regulations referred to in paragraph 6B."

2. In the present case the issue was whether or not employment support allowance should be taken into account in assessing the level of income which should be assessed in the hands of the sponsor who is partially disabled. It was the parties' agreement at the hearing before the judge and recorded by him in paragraph 21 that he was *not* permitted to take into account income of £121.65 per week which the sponsor was receiving as employment support allowance. It was however accepted that the judge could take into account disability living allowance of £42.10. It appears now to be accepted that the employment support allowance *can* properly be taken into account. This was income which was available to the sponsor. It was income to which he was entitled as a result of his physical needs but it was income which was his and he could use in his own hands. If it could be taken into account then it would increase the level of benefits that the appellant receives and therefore the maintenance that he receives to a figure of £163.75 per week, the calculation being that employment support allowance was £121.65, disability living allowance was £42.10. The yardstick by which the case had to be assessed was that a couple would receive £112.55 as being the appropriate level of income support. There was therefore a comfortable surplus of £50 a week.

3. In addition the judge was required to consider whether or not the additional burden on council tax should properly be taken into account. Council tax would be payable and I have been provided with documentation that the average council tax per dwelling is some £1,045. In relation to this particular property the council tax might be somewhat lower but not substantially so. I am satisfied that that the surplus that is available of about £50 a week is capable of bridging the additional burden of council tax that will be payable and in those circumstances I am satisfied that the requirements of the Immigration Rules were met and accordingly the applicant was entitled to entry clearance in the capacity sought.

DECISION

The Judge made an error on a point of law and I substitute a determination allowing the appeal under the Immigration Rules.

ANDREW JORDAN
UPPER TRIBUNAL JUDGE

FEE AWARD
Having allowed the appeal I make a fee award.