Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/13496/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28th July 2017	**On 08th August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

MRS RAJNI RAJNI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Layne, Counsel
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Harrington promulgated on 9th May 2017 in which she refused the Appellant's appeal on human rights grounds, in respect of the appeal against the Respondent's decision to refuse to grant entry clearance to the Appellant as a spouse.

2. Within the Grounds of Appeal, which are a matter of record and are therefore not repeated in their entirety here, but which I have fully taken account of, it is stated that as the Sponsor is entitled to Personal Independence Payments she was exempt from having to provide evidence of an income of £18,600 per annum and that she only had to provide evidence of being able to maintain and accommodate herself adequately without recourse to public funds.

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3. The judge's findings between paragraphs 37 and 41 are challenged in terms of the judge's findings regarding the credibility of the Sponsor's brother, regarding a job offer to the Appellant, and it is further argued that the judge erred in terms of the assessment of whether there was adequate maintenance and accommodation following the Immigration Appeal Tribunal's decision in **KA (Pakistan) [2006] UKAIT 00065** in which it was found that the requirement of adequacy is objective and the level of income and other benefits that would be available if the family were drawing income support remained the yardstick.

4. It is argued that the income support level for a couple over 18 is £114.85 per week, and it is said that the Sponsor's income and benefits combined are in excess of that figure. It is further argued that in respect of the judge's findings on accommodation that the Sponsor has a tenancy of which he has exclusive possession. It is argued tat there is no need to obtain permission from the landlord for the Appellant to live there, and it is further argued that the Sponsor requires dialysis at least twice per week, and it is said that the Sponsor would not be able to visit the Appellant and that the judge's findings that he could are irrational.

5. Permission to appeal has been granted in this case by First-tier Tribunal Judge Andrew on 9th June 2017. He found that there was an arguable error of law in the judge coming to conclusions that the judge arguably did not take account of the guidance in **KA (Pakistan) [2006] UKAIT 00065** and arguably did not take note of the earnings of the Sponsor from Dominos. It was also said to be arguable that the question of accommodation had not been properly considered and it was arguable that in making findings that the sponsor could visit the Appellant in India the judge did not note the Sponsor's medical condition.

6. I have also received and taken full account of the Respondent's Rule 24 reply dated 27th June 2017 in which it is argued that the judge made findings which were properly open to her on the evidence and it was open to the judge to consider whether the Appellant would be adequately maintained within the UK and that the Grounds of Appeal amount to a mere disagreement with the judge's findings.

7. I have also heard careful submissions both by Mr Layne, Counsel for the Appellant, and also Mr Tarlow on behalf of the Secretary of State, and I have fully taken account of those in reaching my decision.

8. Looking at the first challenge to the judgment on the basis of the evidence given regarding the job offer it is argued that finding is inadequately reasoned. At paragraph 39 the judge found that the evidence of the Sponsor's brother in relation to the job offer for the Appellant to be unimpressive as he was unable to explain how he both had very loyal staff with a low turnover and a constant vacancy. The judge found that at its highest, his evidence appeared to be that when they received deliveries they were short-handed, i.e. temporary rather than permanent vacancy, and he was vague on how he came to offer the job and in his oral evidence he gave no indication that he had Skype interviewed the Appellant as referred to in one of the letters. The judge said that that cast doubt on the reliability of the evidence regarding the job and overall she concluded that he was trying to assist his brother, but on the basis of the evidence, the Appellant had not proved that there was

ongoing work for her to undertake and for which she would be paid. The judge has given adequate and sufficient reasons for her findings in that regard. Although it is said within the Grounds of Appeal that it was a job at minimum wage cleaning and one that anyone could do, the judge had given adequate and credible reasons for rejecting the evidence of a job offer.

9. In the second Ground of Appeal it is argued the judge failed to take account of the earnings of the Sponsor at Dominos, a pizza delivery company, when assessing whether or not there was adequate maintenance. In that regard Mr Layne refers me to the contract of employment with Dominos, at page 99. Although saying that the rate of pay will be £7.60 per hour, the contract does not, as Mr Layne properly concedes, give any minimum number of hours. Although in re-examination before the First-tier Judge, it was said that the Sponsor works thirteen hours at £7.60, Mr Layne properly concedes that there were no actual wage slips or other documents, to prove the actual hours and total amount earned. The judge at paragraph 40 stated:

> "*In relation to the adequate maintenance requirement there is no requirement for specified documents to be provided. However, there is a requirement for the Appellant to prove her case and the information before me does not include the necessary calculation or the evidence for me to undertake the calculation. In particular, I do not know what impact the Appellant's presence in the UK would have on the Sponsor's entitlement to benefits, such as housing benefit or council tax reduction, or liability to make payments for those accommodation expenses*".

10. She went on to find that the Appellant had not proved that she would be adequately maintained in the UK without recourse to public funds. In that regard, as Mr Tarlow points out, there was no actual schedule of the amount of income or benefits or other expenses, such as housing benefit and council tax, that would be payable. Although there is evidence within the bundle as to the amount of the Personal Independence Payment at page 13 at £21.80 and the Employment Support Allowance at page 17 in the sum of £72.40, as Mr Layne properly concedes, there was actually no documentary evidence before the judge as to the level of entitlement to housing benefits or what council tax would be paid and there is no evidence as to the changes in any council tax or housing benefit were the Appellant to come to the UK.

11. Obviously if the Sponsor was previously living on his own then there may be an increase in council tax payable, if no longer entitled to the single person's discount. But clearly without evidence as to the level of housing benefit and the other council tax and other liabilities, and in circumstances where the judge did not have any actual wage slips to confirm the Sponsor's level of income, it was open to the judge on that evidence to find that there was insufficient evidence for her to carry out the necessary calculation in order to determine whether or not the available funds were above or below the income support threshold.

12. In respect of accommodation the judge also was not satisfied that the Appellant could be actively accommodated within the UK without recourse to public funds, and found at paragraph 42 that there was no evidence demonstrating the Sponsor's landlord would allow the Appellant to reside in the property with him. It is argued

that this was not a case of sub-letting, it was simply a case of a spouse coming to join the Sponsor in the UK.

13. The tenancy agreement that was before the judge was in very short form format at pages 190 and 191, where reference was made to members of the household. The Appellant was not mentioned. It was open to the Judge on the evidence to find there was insufficient evidence to show that the landlord would actually allow or had consented to the Appellant residing within his property even though they were spouses.

14. It is further argued that the judge had failed to properly consider the Sponsor's health in finding at paragraph 43 of her judgment that he could go and visit her in India. It is said that he requires dialysis and he is of very limited means and the finding that the Sponsor can visit the Appellant in India is irrational. However the judge at paragraph 43 noted that the Sponsor did not want to move to India, he was cautious about visiting again given his ill health that followed his last visit, but she found that the evidence did not establish that the medical treatment in India caused his ill health. As a result she concluded on the balance of probabilities that the Sponsor's health would not prevent him from visiting the Appellant in India.

15. As Mr Layne properly concedes there were no medical reports or other medical evidence before the First-tier Tribunal Judge regarding the Sponsor's health. Nor was there evidence regarding the cost of short term dialysis treatment in India. The Judge has taken account of the Sponsor's ill health, but found that there was inadequate evidence before her to conclude that he could not visit the Appellant in India. Given the lack of evidence within the Appellant's bundle that was again a finding open to her on the facts.

16. Having carefully considered the Grounds of Appeal and the challenges made to this decision I am not persuaded that the decision of the First-tier Tribunal Judge does contain any material errors of law and I therefore maintain the decision. There is nothing to prevent the Sponsor making a further application with all the requisite material being presented. However, the judge made findings which were open to her on the evidence before her and the decision does not reveal any material error of law. I therefore dismiss the appeal.

Notice of decision

The decision of First-tier Tribunal Judge Harrington does not reveal any material errors in law and is maintained.

No anonymity direction is made.

Signed Date 6th August 2017

RFMcGinty

Deputy Upper Tribunal Judge McGinty