

**THE IMMIGRATION ACTS**

Heard at Royal Courts of Justice  
On 13 June 2013

Determination Promulgated  
On 22 July 2013

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

KULBIR KAUR  
SARABJIT SINGH

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr H Makkar, of Malik & Co Solicitors  
For the Respondent: Ms S Kiss, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are nationals of India, born respectively in November 1980 and November 1987. They are a student wife and her dependent husband. They appealed to a Judge of the First-tier Tribunal against the decision of the Secretary of State of 29 October 2012 refusing to vary leave to enter the United Kingdom.
2. The first appellant entered the United Kingdom on 23 January 2011 as a student with her husband as her dependant. Their leave was due to expire on 31 May 2012, but on 30 May they applied for further leave to remain. The application was refused on 29 May 2012.

3. The judge noted documentation submitted in support of the application. In essence the appellant sought to rely on financial support from her husband's mother, Kulwant Kaur, who had undertaken to finance fully the first appellant's further studies in the United Kingdom. She swore an affidavit on 21 May 2012 and provided a bank statement dated 10 April 2012 showing a sum which was found by the judge at paragraph 15 of the determination to amount to the equivalent of approximately £2,500, the sum required as maintenance.
4. The judge held that the respondent had rightly relied on paragraph 13 of Appendix C to HC 395 on the basis that the appellant was seeking to rely on the Rules prior to their amendment, and in any event there was no evidence that the funds had ever in fact become available to the appellants. The appeals were accordingly dismissed under the Immigration Rules and Article 8 of the European Convention on Human Rights, though as the judge noted, the decision to make removal directions under Section 47 of the 2006 Act was unlawful as concluded by the Upper Tribunal in **Adamally and Jaferi [2012] UKUT 00414 (IAC)**.
5. The appellants sought permission to appeal, and permission was granted by a Judge of the First-tier Tribunal, who noted that the application fell to be considered by reference to paragraph (ba) of Appendix E of the Immigration Rules, in respect of which it was arguable that the funds being made available by the second appellant's mother were available to him and by reason of his marriage to his wife the first appellant.
6. In his submissions Mr Makkar relied on his skeleton argument and also the decision of the Upper Tribunal in **Ejifugha [2011] UKUT 00244 (IAC)**. He also put in an archived copy of the relevant Immigration Rules. He relied on the grant of permission. Funds had been made available by the first appellant's mother-in-law. The meaning of "available" had been considered by the Upper Tribunal in **Ejifugha** at paragraphs 14, 15 and 18 in particular. The Rule had subsequently been amended in light of Upper Tribunal decisions to require the funds to be "held", however it was common ground that the availability test was the relevant one at the date in question in this case.
7. Ms Kiss argued that **Ejifugha** involved an appellant's husband whereas there was only one applicant in this case and a dependant. The account in question belonged to her husband's mother and not to her husband. She argued, with reference to a decision of the Tribunal in **KP [2006] UKAIT 00093** and by analogy to the situation there that a mother-in-law did not come within the wording of the Rule.
8. I explored with the representatives the relevant provisions. Appendix C to HC 395 is headed Maintenance (Funds) and sets out requirements in cases where an applicant is required to obtain points under Appendix C. Appendix E is concerned with Maintenance (Funds) for the family of relevant points-based system migrants. It is clear from paragraph (aa) of Appendix E that paragraphs 1A and 1B of Appendix C

apply to Appendix E, but they were only added as from 20 July 2012, which is after the date of application in this case.

9. It is clear from paragraph 13 of Appendix C that, for funds to be available, they must be held by the applicant, his or her parent(s) or legal guardian(s) or an official financial sponsor. Under Appendix E, paragraph (f) makes it clear that where the applicant is applying as the partner of a relevant Points Based System Migrant, the funds must be available to him or to that migrant. It is clear that the first appellant cannot succeed under Appendix C, as her circumstances do not fall within the definition of applicability set out at paragraph 13. That definition is not carried over to Appendix E in this case because it was added after the date of application. But paragraph (e) of Appendix E states that where the relevant Points Based Migrant is applying for entry clearance or leave to remain at the same time as the applicant, the amount of funds available to the applicant must be in addition to the level of funds required separately of the migrant.
10. The judge was satisfied that the sums offered by the second appellant's mother were sufficient to meet the maintenance requirements of the first appellant, but there is no indication that any offer was made to enable adequate maintenance of the second appellant.
11. Hence the judge was right to dismiss the appeal and, for somewhat different reasons, his decision is maintained.

Signed

Date

Upper Tribunal Judge Allen