



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/22622/2013
IA/22625/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 4th June 2014

Promulgated

On 10th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

TEHMINA GUL + 1

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

In person, no representative

For the Respondent:

Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of Pakistan born on 12th March 1979. She appeals against the determination of the First-tier Tribunal dated 12th February 2014 dismissing her appeal under paragraph 284 and 301 of the Immigration Rules, but allowing it under paragraph EX1 of Appendix FM. On 22nd May 2014, the Respondent refused to vary leave to remain and made a decision to remove the Appellant, and her dependant child, to Pakistan under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Permission to appeal was granted by Upper Tribunal Judge Taylor on 15th April 2014 on the grounds that it was arguable that the Judge erred in his calculations of the income available to the Appellant and in finding that she was unable to meet the maintenance requirements.
3. In her Rule 24 response, the Respondent accepted that the Judge ought to have taken into account working tax credit and child tax credit when calculating the amount of income (Ahmed [2013] UKUT 00084), but opposed the appeal on the basis that the Judge directed himself appropriately in any event.
4. At the hearing, Mr Nath accepted that working tax credit and child tax credit should have been taken into account. There was a discussion as to the income available to the Appellant, after which I indicated that the Appellant had shown that she satisfied the maintenance requirements, for the reasons set out below.
5. The Judge concluded that the Appellant's husband earned £2048.14 per month after tax. At the date of hearing, the Appellant's husband also received working tax credit of £359.52 and child tax credit of £459.79. The Judge found that these were public funds and could not be taken into account. The Judge also found that they had been calculated based on an annual income of £10,750 and the Appellant's husband would have earned £11,187.23 at the end of the tax year.
6. I find that the Judge erred in law in finding that the tax credits were public funds. He also erred in finding that he could not take them into account because they were based on a lower annual income. The Appellant's husband was entitled to those tax credits at the date of hearing. The letter from the DWP stated that the amount of working tax credit would be reduced to £223.77 and child tax credit would be increased to £461.02 in April 2014. The tax credits were adjusted to allow for the change in income.
7. The monthly income therefore amounted to £2867.45. The Appellant's outgoings were £1298.87 per month and therefore the weekly disposable income was £392.15. This exceeded the income support rate of £261.19.
8. The Judge accepted that the income at the date of hearing exceeded the amount of income support, but found that it would not do so after 5th April 2014 unless the Appellant's husband was awarded a substantial pay rise. In coming to this conclusion the Judge failed to take into account the tax credits, which even on the reduced figures, resulted in a disposable income greater than income support.
9. Accordingly, I find that the Judge made an error of law and the decision dated 12th February 2014 is set aside. I remake the decision and allow the appeal under paragraphs 284 and 301 of the Immigration Rules.

Deputy Upper Tribunal Judge Frances

9th June 2014