



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/17765/2013

THE IMMIGRATION ACTS

Heard at Field House

On 15th May 2015

**Decision & Reasons
Promulgated**

On 22nd May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOHAMED RINAS MOHAMED RIZVI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Ms A Walker, Counsel instructed by Jein Solicitors,
Lewisham, London

DECISION AND REASONS

1. The Respondent, Mr Rivzi, is a citizen of Sri Lanka whose date of birth is recorded as 18th October 1995. On or about 15th June 2015 application was made on behalf of the Respondent for him to join his mother in the United Kingdom having regard to paragraph 197 of the Immigration Rules.

2. On 21st August 2013 the Entry Clearance Officer refused the application on the basis that there was no sufficient evidence in respect of the accommodation. There then followed a supplementary refusal letter of 9th January 2014 raising the issue of sole responsibility followed by an Entry Clearance Manager's review of 9th January 2014 in which the decisions were upheld. The Entry Clearance Manager recognised that he/she was concerned with a minor and properly makes reference to Section 55 of the Borders, Citizenship and Immigration Act 2009 although strictly speaking of course it would not apply in an entry clearance case though it is recognised that the same principles should apply in respect of minors who are seeking entry clearance.
3. Mr Rizvi appealed. His appeal was heard on 7th September 2014 by Judge of the First-tier Tribunal M P W Harris. The judge dealt with matters very briefly indeed. Most of the determination is taken up with the principles of law under the Immigration Rules. The judge was satisfied on the basis of the evidence before him that Mr Rizvi had the option of sharing accommodation with his mother or use premises of friends of the Sponsor, his mother. On the issue of sole responsibility the judge found there to be credible oral and documentary evidence of financial support and regular contact but otherwise says very little. Nevertheless the appeal was allowed.
4. Not content with that decision, by Notice dated 4th December 2014 the Secretary of State made application for permission to appeal to the Upper Tribunal. She relied on Section 325(1) of the Housing Act 1985 contending that it was not open to the judge to find that accommodation was adequate were the Sponsor and Mr Rizvi to share, given that the statute provides:

"The room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as husband and wife must sleep in the same room."
5. As to the sole responsibility issue there was, it was contended, inadequate reasoning.
6. Permission to appeal was initially refused but on a renewed application Deputy Upper Tribunal Judge Davey granted permission, though he was of the view that the ground in respect of sole responsibility had little prospect of success.
7. Having looked at the declaration of the Sponsor and the accompanying statement of Mr Rivzi, I agree with Deputy Upper Tribunal Judge Davey that the issue of sole responsibility was a matter that was open to the judge to resolve in the manner in which he has dealt and so that finding will be preserved. In fairness Mr Wilding, wisely, did not pursue the point with any degree of conviction.

8. As to the accommodation issue, though Ms Walker did not seek, with any degree of enthusiasm to meet the Section 325 point but she did seek to persuade me that the judge had looked to the totality of the evidence and was satisfied that there was alternative accommodation which would meet the requirements.
9. The difficulty is that there was more than one address to which reference was being made and indeed one of those addresses, I am told, was an address that only became available to the applicant after the date of decision. I remind myself that the focus is the date of the decision; that goes both to the accommodation and to any human rights issue which may arise in the reconsideration of the appeal.
10. However, there is in my view simply no sufficient analysis of the evidence in relation to the accommodation. It is not possible in my judgment to say that the accommodation was adequate without identifying which, nor was it possible in law to find accommodation adequate if, at the date of decision, it was not going to be available.
11. The matter will be remitted to the First-tier Tribunal because, though I was willing to look at the possibility of remaking the decision, there was consensus that that is the appropriate course in this case. The matter will be a narrow one, confined, as I have indicated, to the issue of the accommodation as at the date of the decision.
12. Provided therefore there is sufficient evidence before the First-tier Tribunal it may be that the First-tier Tribunal will not be troubled for very long in the resolution of this particular matter. I am conscious that currently it is taking some time for cases to be listed. It may be that if the Sponsor is willing, this matter might more speedily be listed at Stoke or North Shields. I remit the matter to Hatton Cross because that is where it was heard but I imagine that any application to transfer would be met sympathetically. The Appellant is at liberty to adduce any further evidence thought appropriate subject to the proviso that it must be evidence that goes to the date of the decision and not post-decision evidence. I give that latitude because the appeal concerns a person is for the purpose of this appeal a minor.

Notice of Decision

The appeal to the Upper Tribunal is allowed to the limited extent that there was an error of law with respect to the issue of accommodation only. The finding in relation to sole responsibility shall stand.

Signed

Date

Deputy Upper Tribunal Judge Zucker