Upper Tribunal
(Immigration and Asylum Chamber)

AM and SS (PBS – Tier 1 – joint accounts) Pakistan [2010] UKUT 169 (IAC)

THE IMMIGRATION ACTS

Heard at Field House

On 11 May 2010

Before

Mr C M G Ockelton, Vice President

Senior Immigration Judge Spencer

Between

AM

SS

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: No appearance

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

A joint account bearing the name of the applicant meets the relevant evidential requirements of paras 93-96 of the Tier 1 Guidance, so further evidence of the ownership of the funds in the account is not required.

DETERMINATION AND REASONS

1.
The Appellants, husband and wife, are nationals of Pakistan. They appealed to the Asylum and Immigration Tribunal against the decision of the Secretary of State on 9 July 2009 refusing to vary their leave in order to allow them to remain in the United Kingdom, the first Appellant as a Tier 1 (post-study work) migrant and the second Appellant as his dependant. Immigration Judge Raymond dismissed their appeals. The Appellants sought and obtained an order for reconsideration. By virtue of

paragraph 4 of Schedule 4 to the Transfer of Functions of the Asylum and Immigration Order 2010, the reconsideration continues as an appeal to this Tribunal.

2.
At the hearing before us there was no appearance by or on behalf of either Appellant. They had been properly served with notice of the hearing, and we decided to proceed in their absence.

3.
The Appellants met the requirements of the scheme under which they had applied, with the exception of that relating to finance. In order to succeed in the application, the Appellants needed to show that they had available to them £1,333 in personal savings (£800 for the first Appellant and £533 for his wife as dependant) for the three months before their application on 9 June 2009. The application was supported by statements from a Barclays Bank current account, but on a number of occasions during the period from 8 March to 8 June, the balance fell below – sometimes well below – the required sum.

4.
At the hearing before the Immigration Judge, the first Appellant submitted further evidence. It consisted of statements of a joint account held at Barclays Bank, the account holders being the first Appellant and Mr Muhammad Kambul Hasan, at the Appellants' address in Walton-on-Thames. The first Appellant said that Mr Hasan is a friend of his, and they used to live in the same house.

5.
Some of the statements were not originals but certified duplicates. The first Appellant said that he had submitted this evidence with his application and it had not been returned to him. Whether or not that is so, evidence produced at the hearing of an appeal which, if it had been produced with the application would have allowed the application to succeed, is admissible in an in-country appeal under the provisions of s. 85(4) of the Nationality, Immigration and Asylum Act 2002, as explained in NA and Others (Tier 1 post-study work – funds) [2009] UKAIT 00025.

6.
As the Immigration Judge found, the joint account had over £1,333 in it on every one of the requisite days forming the three-month period before the Appellants made their application.

7.
The Immigration Judge reasoned that the joint account

"cannot be included in these calculations as it is quite simply impossible to know what funds in that joint account were personally available at any given time to the main appellant and his wife that Mr Hasan did not also have a call on. Moreover, the spouse of the main appellant has her own responsibility in her individual application of showing that she has the minimum level of funds required for a dependant, but she does not figure in the joint account with Mr Hasan. Whilst paragraph 319C (g) and Appendix E (ea) (i) (ii) states that the funds in question must be available to the dependant applicant or to her Tier 1 Migrant partner, which obviously allows separate accounts to be used in that context; as far as joint accounts are concerned the PBS (Dependant) Policy Guidance states at paragraph 77 – 'If the applicant wishes to rely on a joint account as evidence of available funds, he/she, the main applicant, or (for children) his/her other parent who is legally present in the United Kingdom, must be named on the account along with one or more other named individual(s)'. This could, it has to be said, be loosely interpreted as allowing in a joint account held by the dependant spouse or main applicant with another person who is a complete stranger to the application at issue, but this then comes back to the initial problem of it being impossible to assess in

such a context what funds are at any particular moment in time personally available to the other account holder who is not making the application. I take it as implicit to the overall context of paragraph 77 of the Guidance that the other one or more individuals who are also named as joint account holders must have an important interest turning upon the application, as to make it unthinkable that they could or would dispute the minimum sum as having been consistently available over a three months period to the person or persons actually making that application. It cannot be seen how such an assumption could be made about a third party and stranger whose personal financial circumstances cannot fall to be assessed in the application."

8.
Mr Deller told us that provisions relating to joint accounts had been accidentally omitted from the version of the Guidance applicable to the present application, but he agreed with our observation that, when provisions as to joint accounts had been included in the Guidance, they appeared to add nothing to the requirements for individual accounts. Mr Deller told us that he did not seek to support the Immigration Judge's determination.

9.
We do not think that the Immigration Judge was right to say that the second Appellant's ability to meet the maintenance requirements was to be regarded as in some way independent. There is no doubt that the maintenance requirements of the two Appellants can properly be met by showing that together they have done what the Rules and the Guidance require. The Guidance indicates with clarity the circumstances in which the Secretary of State will regard possession of the requisite funds as established for the purposes of the Rules. Where the evidence is in the form of bank statements, the requirements are set out in paragraphs 93-96 of the relevant Guidance:

"93. The evidence to support personal savings for at least three months must be original, on the official letter-headed paper or stationery of the organisation and have the official stamp of that organisation. It must have been issued by an authorised official of that organisation.

94. Evidence must be in the form of cash funds. Other accounts or financial instruments such as shares, bonds, pension funds etc, regardless of notice period are not acceptable.

95. The evidence of maintenance must be of cash funds in the bank (this includes savings accounts and current accounts even when notice must be given), loan or official financial or government sponsorship available to the applicant. Other accounts or financial instruments such as shares, bonds, pension funds etc, regardless of notice period, are not acceptable.

96. Only the following specified documents will be accepted as evidence of this requirement:

i) Personal bank or building society statements covering the three consecutive months.

The most recent statement must be dated no more than one calendar month before the date of application.

The personal bank or building society statements should clearly show:

• the applicant's name;

• the account number;

• the date of the statement;

• the financial institution's name and logo;

• transactions covering the three month period;

• that there are enough funds present in the account (the balance must always be at least £2,800 or £800, as appropriate).

…”

10.
Provided the money is in the account, it does not appear to matter who it belongs to. It may, for example, have been borrowed simply for the purpose of having bank statements meeting the requirements of the Guidance. The Immigration Judge’s comments are obviously sensible. His mistake was to apply common sense to the interpretation of the points-based scheme. There is no perceptible rationale behind the conclusion that the possession of £800 (and not a penny less) for three months (and not a day less) is showing that an application is granted, the applicant will be satisfactorily maintained for what may be a very long period in the future. The rules are simply hoops which have to be jumped through.

11.
Whoever it was that was properly to be regarded as the owner of the money in the joint account, that account clearly met the requirements of the Guidance: the first Appellant’s name appeared on the statement. If, as the first Appellant asserted to the Immigration Judge, the joint account statements were sent with the applications, the applications should have been allowed. In any event, the appeals should have been allowed. The Immigration Judge erred in law in his approach to the joint account statements. We re-make the decision and allow the Appellants’ appeals.

Mr C M G Ockelton

Vice President of the Upper Tribunal, Immigration and Asylum Chamber