

Visa applications for family members coming to the UK: The UK Supreme Court decides on sponsorship

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It is essential to ensure that a requirement for maintenance and accommodation is met before one invites a family member to come to the UK to settle. This could be the case for family members seeking to join spouses or relatives settled in the UK. The Immigration rules deal with various categories of family members seeking leave to enter the UK to settle with other family members already settled in the UK. Those who are based in the UK are described as "sponsors" taking into account the role they have to play for bringing a family member into the UK. Basically the categories of family members for which sponsors are required are rules 281 dealing with spouses (or, following amendment, civil partners), rule 297 dealing with children and rule 317 dealing with parents, grandparents and other dependent relatives. All these rules include a requirement that those seeking entry will be able to be accommodated and maintained in the UK without recourse to public funds.

In most cases families are forced to leave apart because the family member settled in the UK is unable to readily put across evidence of adequate funds or resources to look after the family member to come to the UK. The question which arose for determination by the UK Supreme Court is whether other family members based in the UK could come in and help with their bank statements or resources to support any such other family visa application to satisfy the maintenance requirement. This further help could be from other family members or friends in support of a visa application. Any such support by family members or friends is referred to as third party support.

In the case of Mahad (previously referred to as AM) (Ethiopia) and others and the entry Clearance Officer the single most important question for decision on each of the five conjoined appeals was whether this requirement for maintenance and accommodation permits third party support or whether it precludes maintenance provided by anyone other than the sponsor. The entry clearance officers were of the view that that third party support was not acceptable. The appellants argued the need and importance of third party support. Three of the appellants sought to join their spouses under rule 281. The other two appellants applied to enter under rule 317 to join a son settled in the UK. Another one with a cousin sought to join her daughter settled in the UK. Rule 297 with regards to inviting children was also considered. In its determination the Supreme Court finally laid to rest the ongoing debate about whether third party support is allowed in family type cases. The court allowed the appeals and ruled that third party support is allowed after interpreting the requisite rules.

In a unanimous judgment their lordships ruled that MW Liberian SSHD [2007] EWCA civ 1376- a decision that bound the court of appeal below in AM (Ethiopia v Entry Clearance Officer [2008] EWCA Civ 1082- had been wrongly decided and that financial support provided by third parties should be taken into account when considering whether a person who was seeking leave to enter the UK to join a sponsoring relative could be maintained without recourse to public funds. Third party support is no longer precluded from consideration under the maintenance requirements in Part 8 (Family Members) of the Immigration Rules. This basically means that the entry clearance officers shall be casting more attention to evidence provided by any such third parties. There was no proper answer as to why a relative should not seek entry to join more than one person. It was open to Entry clearance officers to ask third party offering long

term support to become a joint sponsor and give an undertaking to underwrite his commitment. It is important for the applicant to ensure that any third party support relied upon was indeed assured. If one fails to do so the application could be refused. The court ruled that the principal maintenance requirements in Part 8 of the rules are indifferent (save as to verification and reliability) as to the source of the funds going to maintain an applicant for entry clearance post arrival, so too is the source of funds supporting the relative while abroad for the purposes of paragraph 317 of the rules. Financial dependency for the purposes of the rule was established by the fact of payment by the resident relative.

It is absolutely important for the third party to provide detailed evidence to show that a third party would be able and willing to support (income, savings outgoings and future expenses.) If a person has been providing any such support for a long time then the entry clearance officers would not have difficulties accepting any such evidence. Evidence has to be realistic and plausible. In the judgment of Mahad, Lord Collins observed that members of the migrant communities have always supported each other. One hopes this would continue for the well being of reunion of families settled in the UK and those abroad.

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