

ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

Heard at: Glasgow
2008

Date of Hearing: 11 September

Before:

**Mr C M G Ockelton, Deputy President of the Asylum and Immigration
Tribunal
Immigration Judge Price OBE**

Between

**EA
IA
VA**

Appellant

and

THE ENTRY CLEARANCE OFFICER, ABUJA

Respondent

Representation

For the Appellant: Mr. Ndungu of IAS

For the Respondent: Mr. M Matthews, Home Office Presenting Officer

Where housing is provided by a housing association it will amount to public funds within the meaning of para 6 of HC 395 if the housing association is acting as the delegate of a local authority in respect of the latter's housing obligations.

DETERMINATION AND REASONS

1. The appellants, citizens of Nigeria, appealed to the Tribunal against the decision of the respondent on 12 November 2007 refusing them entry clearance as the dependent wife and children of the sponsor, who is the holder of a permit as a highly skilled migrant. The Immigration Judge dismissed their appeals. The appellants sought and obtained an order for reconsideration. Thus the matter comes before us.

2. The original refusal was on maintenance and accommodation grounds. The Immigration Judge resolved issues of the availability and adequacy of maintenance in the appellants' favour. The only outstanding matter is therefore accommodation. The sponsor is a tenant under a Scottish Secure Tenancy. His landlord is the Glasgow Housing Association. He took the tenancy after he was given notice to quit by a former landlord.
3. Paragraphs 195(iii) and 197(iv) of the Statement of Changes in Immigration Rules, HC 395, which apply respectively to the first appellant and the other two appellants, require them to show they would be accommodated adequately in the United Kingdom without recourse to public funds. "Public funds" is defined in Para 6 as meaning, amongst other things,

“(a) Housing under Part VI or VII of the Housing Act 1996 and under Part II of the Housing Act 1985, Part I or II of the Housing (Scotland) Act 1997, Part II of the Housing (Northern Ireland) Order 1981, or Part II of the Housing (Northern Ireland) Order 1988”.
4. The principal statutes relating to the provision of the Housing in Scotland are the Housing (Scotland) Act 1987, to which reference is made in para 6 of the Immigration Rules, and the Housing (Scotland) Act 2001, an Act of the Scottish Parliament to which the Immigration Rules make no reference. Scottish Secure Tenancies are a creation of the 2001 Act; but local authorities' powers to provide housing are contained in the 1987 Act. It was for that reason that in KA [2007] UKAIT 00081, the Tribunal held that housing provided by a local authority, even by means of a Scottish Secure Tenancy, must be "housing under... Part I or II of the Housing (Scotland) Act 1987", and thus counted as public funds.
5. The difference between the facts of KA and the present case is that whereas in KA the sponsor's landlord was the local authority, in the present case the sponsor's landlord is the Glasgow Housing Association. The Glasgow Housing Association is a Registered Social Landlord with the meaning of Part 3, Chapter 1 of the 2001 Act. That chapter establishes the concept of Registered Social Landlords and enables both existing and future associations, if properly qualified, to register. There is an important connection between the social housing provisions of the 1987 Act and the provisions relating to Registered Social Landlords in the 2001 Act, for ss 5-6 of the 2001 Act enable a local authority that has an obligation to a homeless person under the 1987 Act to request a Registered Social Landlord to provide the necessary access to housing; and the 2001 Act also amends the provisions of the 1987 Act relating to the maintenance of housing lists and the allocation of tenants, by treating Registered Social Landlords in much the same way as local authorities.
6. The effect of the 2001 Act in this field is that a local authority can in essence discharge many of its duties in relation to housing homeless

persons through the agency of a Registered Social Landlord; and a Registered Social Landlord can and in some cases must provide houses according to the same criteria that a local authority would have used. A local authority can effectively delegate its housing functions to a Registered Social Landlord. We were told that in Glasgow that has to all intents and purposes happened: The Glasgow Housing Association performs the functions of the local authority.

7. Registered Social Landlords, however, do not have only the functions of local authorities. Registered Social Landlords are housing associations and, without forfeiting recognition as Registered Social Landlords, may function as other housing associations do, by providing accommodation to their members, and doing so at a rent which is likely to be lower than that on the open market, because Registered Social Landlords are required to operate on a not-for-profit basis. Thus, whereas the tenants of a local authority will necessarily be persons who are housed under the provisions of 1987 Act, the tenants of a Registered Social Landlord may be persons in respect of whom a housing obligation has arisen under the 1987 Act, or they may be simply private tenants of the housing association. Where a sponsor is in Scotland a tenant of a local authority he will, by para 6 of the Immigration Rules as interpreted in KA, necessarily be regarded as reliant upon public funds; but where a person is a tenant of a Registered Social Landlord, the question whether he is reliant upon public funds will depend on whether his tenancy derives from duties of the local authority delegated to the Registered Social Landlord, or from the activities of the Registered Social Landlord as an autonomous housing association.
8. We have set out those principles because it seems to us appropriate to do so in the light of Mr. Matthews' careful submissions to us. They are intended to be of assistance in future cases of this nature. The question whether in an individual case the sponsor's housing is or is not 'public funds' will be, as we have said, a matter of fact.
9. In the present case Mr. Ndungu made it clear at the beginning of his submissions that he conceded that, because the sponsor's tenancy arose following his having been given notice to quit by his previous landlord, it arose from the local authority's duty to house the sponsor as a homeless person. The sponsor's accommodation therefore amounted to 'public funds' because it is housing under Part I or II of the Housing (Scotland) Act 1987. It appears to us that Mr. Ndungu's concession was entirely correct. A person who is a tenant of a Registered Social Landlord might not be in receipt of public funds; but the sponsor was.
10. For the foregoing reasons we find that the Immigration Judge made no error of law and we order that her determination, dismissing this appeal, shall stand.

C M G OCKELTON
DEPUTY PRESIDENT