

# ILPA information sheet

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## Third Party Support

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On 16 December, the UK Supreme Court gave judgment in *Ahmed Mahad & Ors v ECO* [2009] UKSC 16. A copy of the judgment is available at:

<http://www.bailii.org/uk/cases/UKSC/2009/16.pdf>

The UK Supreme Court is the highest court in the UK. It has replaced the House of Lords. The judgment in *Ahmed Mahad* is about when a British citizen or someone with indefinite leave to remain may rely upon funds, other than his or her own, to support a family member who wishes to join him or her in the UK under the Immigration Rules. (The family member may also rely upon his or her own funds.) This is often referred to as a question of third party support.

This information sheet provides information about the judgment and the relevant Rules.

### **The relevant Immigration Rules**

The Immigration Rules set out the requirements that someone must meet in order to come to or stay in the UK. The particular Rules considered by the UK Supreme Court set out the requirements for:

- a spouse or civil partner who wants to join his or her partner in the UK
- a child who wants to join his or her parent or other relative in the UK
- someone who wants to join the relative, on whom he or she is dependent, in the UK

However, the Rules set out requirements for other family-related immigration – e.g. someone who wants to join his or her fiancé in the UK. These family-related Immigration Rules are set out in Part 8 of the Rules. Many of these include similar requirements to those included in the particular Rules considered by the court. The court's decision (see below) should also be applied to those Rules which have similar requirements.

The Rules set out several requirements. These requirements include that there must be adequate accommodation and funds available so that the person coming to the UK can be properly housed and supported without recourse to public funds. “Without recourse to public funds” means that various welfare benefits must not be claimed in order to support or accommodate the person coming to the UK. The relevant benefits are set out in the Rules. Contribution-based benefits are not included in the list.

The “without recourse to public funds” requirement does not preclude the person already in the UK from claiming any benefits entitlement he or she may have. However, he or she must not claim extra benefits by reason of the other person joining him or her.

### **The issue before the UK Supreme Court**

The issue before the court was whether the Rules require that the necessary funds to support and accommodate the family member coming to the UK must be supplied by that family member and the person he or she is coming to join; or whether funds provided by others (third party support) can be taken into account.

The Asylum and Immigration Tribunal and the Court of Appeal had, in a number of cases, decided that the necessary funds must be supplied by the person coming to the UK and/or by the partner, parent or relative he or she is joining in the UK. They had decided that the Rules did not permit third party support.

### **The decision of the UK Supreme Court**

The court decided that the Asylum and Immigration Tribunal and the Court of Appeal were wrong. The Rules do permit third party support.

The Rules preclude “recourse to public funds” (see above). They do no more than this. Funds from any other source may be taken into account. Someone applying for permission to come to the UK to join someone in the UK will still have to demonstrate to the Entry Clearance Officer (ECO) that there are sufficient funds to accommodate and support him or her. The applicant will need to demonstrate that those funds may be relied upon – i.e. that the source is reliable so the funds will continue to be available after the person joins their partner, parent or relative in the UK.

The court decided some further issues. These are described below.

### **Joint sponsors and undertakings**

The Immigration Rules defines “sponsor” as:

*“...the person in relation to whom an applicant is seeking leave to enter or remain as their spouse, fiancée, civil partner or proposed civil partner, unmarried partner, same-sex partner or dependent relative, as the case may be, under paragraphs 277 to 295O or 317 to 319 [of the Immigration Rules].”*

In many (though not all) of the family-related Immigration Rules (Part 8), therefore, the person in the UK whom the other person is coming to join will be a “sponsor” for the purpose of the Rules – e.g. where someone is coming to the UK to join his or her spouse, the spouse will be the “sponsor”.

The Rules permit the Entry Clearance Officer to ask for an undertaking (a promise) from a sponsor that the person coming to the UK will not rely on public funds for his or her support or accommodation. If that undertaking is broken, the sponsor may be prosecuted or required to pay back any public funds that have been relied upon.

The court decided that there may be more than one sponsor in some cases. For example, in the case of someone coming to the UK to join relatives on whom he or she is dependent, more than one relative may be the sponsor. The Entry Clearance Officer could, therefore, ask for an undertaking from more than one relative.

Where there is more than one sponsor, the court decided that it was not necessary for the application form to name each sponsor. In some cases, the Entry Clearance Officer, on considering the evidence submitted, might take it upon himself or herself to suggest that someone not named on the form should be treated as a sponsor and asked to provide an undertaking.