Bulletin 183 Cases

CIS/426/2003

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the Secretary of State, brought with the permission of a legally qualified panel member, against a decision of the Coventry Appeal Tribunal made on 31 July 2002. For the reasons set out below I dismiss the appeal.

Introduction

2. The Claimant was given leave to enter the United Kingdom on the basis of a declaration in writing by his nephew ("A") that A was able and willing to accommodate and maintain the Claimant here without recourse to public funds. Under the relevant legislation the Claimant was prevented from claiming income support for a period of 5 years from the date of his entry to the UK if that document contained an undertaking by A to be responsible for A's maintenance and accommodation. The issue in this case is whether that document did contain such an undertaking. In CIS/47/02 Miss Commissioner Fellner held that a document in materially similar terms did so. The 5 year period has now elapsed, so that my decision only concerns the Claimant's past entitlement to income support. It may, however, be of wider significance if, as I infer from the submissions made on behalf of the Secretary of State, documents in the same or a very similar form have continued to be used in other cases within the last 5 years or so.

3. I held an oral hearing of this appeal at which the Claimant was represented by Mr. Stephen Woodman from Coventry Law Centre and the Secretary of State by Miss Julie Anderson of counsel, instructed by the Office of the Solicitor to the Department of Work and Pensions.

The facts

4. The Claimant is a man who was born in 1930 in what is now Pakistan. On a date which does not emerge from the papers, but which must have been at some time before 9 March 1998 (see Clause 1 of the Declaration, set out below), he applied for leave to enter the United Kingdom as a dependent relative of A, his nephew.

5. On 9 March 1998 A signed before a notary a document ("the Declaration") in the following form:

"**DECLARATION TO SPONSOR A DEPENDENT RELATIVE**

I, [A] of [ ]

SINCERELY AND SOLEMNLY DECLARE as follows:-

1. I make this declaration in support of the application of the following for settlement to the United Kingdom (hereinafter called "the applicant"), in each case he is related to me as stated:

Name	Relationship	Date of birth	Address
[*Claimant's name set out*]	Paternal Uncle	1930	[*Claimant's address in Pakistan set out*]

2. I am able and willing to maintain and accommodate the applicant without recourse to public funds and in suitable accommodation.

3. I am employed as a machine operator by [*name and address of employer set out*]. My average gross earnings are £236.94 per week. (I enclose pay slips/a letter from my employers).

4. I have the following financial and other assets:

1) Halifax Building Society, Coventry £10, 443.81 (statements enclosed).

5. I live at the premises known as [*address of property set* out] which is a 3 bedroomed house. The property is owned by my mother and I pay no rents. No other persons live there except my parents and a brother.

There is ample accommodation for the said applicant at the said premises."

6. On 3 August 1998 the Claimant was interviewed in Pakistan by or on behalf of an Entry Clearance Officer. He claimed to live alone and to have no relations in Pakistan. He said that he had for the past 30 years been supported by his brothers who were living in the United Kingdom sending money to him. He said that his brother would not be sponsoring him as the brother was retired and no longer worked. On 17 March 1999 the Claimant was visited at his home village by an Entry Clearance Officer, whose conclusion was that "the applicant's personal circumstances appear to be as claimed, certainly he is disabled and living alone in difficult circumstances."

7. On 21 April 1999 the Claimant was granted a visa to enter the United Kingdom. The entry certificate visa in his passport said: "settlement to join nephew." He arrived in this country on 9 May 1999, when he was given leave to enter for an indefinite period.

8. On 21 May 2001 (i.e. some 2 years after his arrival) the Claimant claimed income support. In response to some further questions asked by the Benefits Agency after they had received the claim form the Claimant replied that A had been out of employment for 8 months and was finding it a struggle to support himself, let alone the Claimant. He stated that he was now fully reliant on his brother who was a pensioner and was also struggling to support the Claimant. On 15 June 2001 the claim for income support was disallowed, and the Claimant did not appeal.

9. On 1 October 2001 the Claimant made a further claim for income support. He stated in the claim form that he was only getting attendance allowance of £37.00 per week, and could not survive on that amount. He was still living at the property which had been mentioned in the Declaration, and stated that the only other persons living there were his brother and his sister-in-law. A had therefore left that property by then. On 2 October 2001 the claim was again disallowed on the ground that the Claimant's leave to remain in the UK had been given under a sponsorship undertaking, and the sponsor had not died and neither had 5 years elapsed since the undertaking. This time the Claimant did appeal.

The relevant statutory provisions

(a) *Immigration provisions*

10. The material provisions of the current verions of the Immigration Rules (which are not materially different from those in force at the date of the Declaration) are as follows. Rule 317 provides:

"PARENTS, GRANDPARENTS AND OTHER DEPENDENT RELATIVES OF PERSONS PRESENT AND SETTLED IN THE UNITED KINGDOM

Requirements for indefinite leave to enter or remain in the United Kingdom as the parent, grandparent, or other dependent relative of a person present and settled in the United Kingdom

317 The requirements to be met by a person seeking indefinite leave to enter or remain in the United Kingdom as the parent, grandparent or other dependent relative or a person present and settled in the United Kingdom are that the person:

(i) is related to a person present and settled in the United Kingdom in one of the following ways:

(f) the son, daughter, sister, brother, uncle or aunt over the age of 18 if living alone outside the United Kingdom in the most exceptional compassionate circumstances and mainly dependent financially on relatives settled in the United Kingdom; and

(ii) is joining or accompanying a person who is present and settled in the United Kingdom or who is on the same occasion being admitted for settlement; and

(iii) is financially wholly or mainly dependent on the relative present and settled in the United Kingdom; and

(iv) can, and will, be accommodated adequately, together with any dependants, without recourse to public funds, in accommodation which the sponsor owns or occupies exclusively; and

(iva) can, and will, be maintained adequately, together with any dependants, without recourse to public funds; and

(v) has no other close relatives in his own country to whom he could turn for financial support; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity."

11. By Rule 35:

"A sponsor of a person seeking leave to enter or variation of leave to enter or remain in the United Kingdom may be asked to give an undertaking in writing to be responsible for that person's maintenance and accommodation for the period of any leave granted, including any further variation. Under the Social Security Administration Act 1992 .....the Department of [Work and Pensions] .....may seek to recover from the person giving such an undertaking any income support paid to meet the needs of the person in respect of whom the undertaking has been given."

12. Rule 320 contains lists of "grounds on which entry clearance or leave to enter the United Kingdom is to be refused" and of "grounds on which entry clearance or leave to enter the United Kingdom should normally be refused". Included in the latter is the case of "refusal

by a sponsor of a person seeking leave to enter the United Kingdom to give, if requested to do so, an undertaking in writing to be responsible for that person's maintenance and accommodation for the period of any leave granted."

(b) *Social security provisions*

13. By s.115(1), (3) and (9) of the Immigration and Asylum Act 1999 (replacing earlier legislation to like effect) a person is not entitled to income support if he "has leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking." By reg. 2(1) of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 that exclusion from entitlement does not apply if either the person giving the undertaking has died or the person with leave to enter or remain has been resident in the United Kingdom for a period of at least 5 years beginning on the date of entry or the date on which the undertaking was given, whichever is the later. By s.115(10) of the 1999 Act "maintenance undertaking" means, in relation to any person:

> "a written undertaking given by another person in pursuance of the immigration rules to be responsible for that person's maintenance and accommodation."

14. By s.105(1) of the Social Security Administration Act 1992 ("the 1992 Act")

> "If –
>
> (a) any person persistently refuses or neglects to maintain himself or any person whom he is liable to maintain; and
>
> (b) in consequence of his refusal or neglect income support .....is paid to or in respect of him or such a person,
>
> he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine of an amount not exceeding level 4 on the standard scale or both."

15. Section 106 of the 1992 Act provides that if income support is claimed by or paid to a person whom another person is "liable to maintain", the Secretary of State can seek from a magistrates' court an order requiring the liable person to make payments to the Secretary of State. By s.106(2):

> "On the hearing of a complaint under this section the court shall have regard to all the circumstances and, in particular, to the income of the liable person, and may order him to pay such sum, weekly or otherwise, as it may consider appropriate, except that in a case falling within section 78(6)(c) above that sum shall not include any amount which is not attributable to income support (whether paid before or after the making of the order."

16. By s.78(6)(c) and s.105(3) of the 1992 Act the following provision has effect for the purposes of sections 105 and 106:

> "a person shall be liable to maintain another person throughout any period in respect of which the first-mentioned person has .....given an undertaking in writing in pursuance of immigration rules within the meaning of the Immigration Act 1971 to be responsible for the maintenance and accommodation of the other person."

The Tribunal's decision

17. By its decision of 31 July 2002, now under appeal to me, the Tribunal allowed the Claimant's appeal against the decision of 2 October 2001, holding in its Decision Notice that

the Claimant did not fall within the provisions of s.115 of the Immigration and Asylum Act 1999. In its admirably clear Statement of Reasons the Tribunal said:

> "The only issue for me has been whether a document in these terms is properly to be regarded as an undertaking within the meaning of section 115. The word "undertaking" in its relevant sense is defined in the Shorter Oxford Dictionary, 3rd edition, as "a pledge, promise: guarantee." This definition accords with the common common legal use of the word to mean a promise on which another person is expected to act. I am satisfied that this is the proper interpretation of the word in the context with which I am concerned today. I can find nothing in [the Declaration] which amounts to a promise. The document is expressly stated to be in support of [the Claimant's] application for settlement in the United Kingdom. It contains a statement that [A] is able and willing to maintain and accommodate [the Claimant] without recourse to public funds and in suitable accommodation, and goes on to describe his employment, financial circumstances, and housing arrangements. In my judgment an assertion that an individual is able and willing to act in a particular way falls well short of a promise that he will act in such a way. As I have noted above, I am satisfied that an undertaking in the correct sense must include some element of promise. [The Declaration] in my judgment contains no such element, and accordingly cannot be regarded as an undertaking within the sense contemplated in section 115."

Standard forms of undertaking

18. It is clear from the facts of and evidence put before the Commissioners or the court in other cases (and in particular *Shah v. Secretary of State* [2002] EWCA Civ 285, reported as R(IS) 2/02, and *R (on the application of Begum) v. Social Security Commisioner* [2003] EWHC 3380 (Admin Court – Sir Christopher Bellamy) that there has since at least 1994 (see *Shah*) been an official standard form of undertaking which is available for use when an undertaking is required. It has been referred to as a form RON 112. There is also reference in the cases to a form SET(F), which was described in para. 15 of *Begum* as "a somewhat more detailed version of RON 112." It is not clear what the relationship between those two forms is; they may have been devised by different branches of government. However, all versions of these forms described in the cases make absolutely clear that the sponsor "undertakes" that he will "be responsible for his/her maintenance and accommodation in the United Kingdom throughout the period of that leave and any variation of it." They refer to the Secretary of State's power under the 1992 Act to recover from the sponsor income support paid to the applicant, and some versions at least refer in addition to the possibility of prosecution under s.105 of the 1992 Act.

19. It is also clear, however, that in some cases the official form of of undertaking is not (or at least was formerly not) used. In some such cases the document nevertheless makes clear that the sponsor is giving an undertaking that the applicant will be maintained without recourse to public funds. In *Begum*, for example, the operative clause was: "If [applicant] comes to the United Kingdom I undertake that she will be maintained and accommodated without recourse to public funds ....." That document contained no reference to the Secretary of State's powers to recover income support from the sponsor or to the possibility of prosecution of the sponsor. In other cases, however, (see the documents which fell to be considered in CIS/2816/2002, CIS/47/02 and the Declaration in this case) the document is in the form of a declaration and express words of undertaking are absent.

Previous decisions

20. It is clear that a document need not be in one of the official forms of undertaking (i.e. RON 112 or similar) in order to fall within the definition of "maintenance undertaking" in s.115 of the 1999 Act: *Begum.* Nor need it use the word "undertake". It is sufficient that it

contains words which amount to an undertaking that the Claimant will be maintained and accommodated without recourse to public funds, and that it was given in order to obtain entry clearance for the applicant: CIS/2816/2002 (referred to in more detail below).

21. On 11 October 2002 (after the date of the Tribunal's decision but before the date when the Statement of Reasons was signed) Miss Commissioner Fellner gave her decision in CIS/47/02. In para. 11 she described the declaration in that case as being "a statutory declaration in the usual UK form and headed "Statutory Declaration to Sponsor". As with the Declaration in issue before me, it set out the details of the sponsors' employment and accommodation position. The operative paragraph said "we are able and willing to accommodate and look after them in our house at ....." The declaration in that case was therefore in materially identical terms to those of the Declaration before me. (The declaration in that case contained the additional word "Statutory" in the heading. It is not clear from Miss Fellner's decision whether it was a statutory declaration properly so called – i.e. in the form set out in the Schedule to the Statutory Declarations Act 1835. I suspect that it did not contain the necessary words "I make this solemn declaration conscientiously believing the same to be true ...etc", but nothing turns on this for present purposes.)

22. Miss Commissioner Fellner held an oral hearing, at which both parties were represented by counsel (the Secretary of State by Miss Anderson). The arguments put forward on behalf of the claimant were along the lines of those which the Tribunal accepted in the case before me, but the Commissioner rejected those arguments and held that the document did amount to a maintenance undertaking.

The Secretary of State's submissions

23. The Secretary of State's submissions to me were contained in a number of written submissions, Miss Anderson's skeleton argument, and her oral submissions at the hearing. I hope that the following is a fair summary of those arguments.

(1) Even adopting a narrow approach of simply construing the terms of the Declaration without reference to surrounding circumstances it is clear that A was agreeing that the Claimant would be maintained without recourse to public funds:

(a) The word "sponsor" in the heading carries with it an assumption of responsibility for the person sponsored. Reliance is placed in the definition of the noun "sponsor" in the Concise English Dictionary 7th ed as a "person who makes himself responsible for another."

(b) The words "I am able and willing to maintain and accommodate the applicant" go beyond a statement of present willingness but indicate an assumption of responsibility for the future maintenance and accommodation of the Claimant. The "willingness" of A cannot on any view have been intended to be limited to his state of mind at the date of the Declaration because Clause 1 confirms that the Declearation was given in support of an application for entry clearance, and entry clearance would obviously not be granted until some time after the document was signed.

(c) The decision of Mr. Commissioner Williams in CIS/4074/1997 establishes that a document can constitute an undertaking even though the time for which the maintenance obligation is to run is not stated.

(2) In any event, that meaning becomes even clearer when the Declaration is construed in the light of the following surrounding circumstances:

(a) A's intention in signing the document was to enable the Claimant to obtain entry clearance and leave to remain, which (see Rule 317) involved establishing that the Claimant "can, *and will*" be accommodated and maintained without recourse to public funds for the duration of the leave to remain;

(b) The entry clearance officer could not properly have been satisfied that that requirement of Rule 317 was satisfied without an undertaking from A. Miss Anderson accepted that there might be exceptional circumstances when an *undertaking* from a sponsor would not be necessary – for example, if the sponsor were extremely rich and it was in the particular circumstances clear that the sponsor would in fact maintain the applicant. However, Miss Anderson submitted that in the absence of such exceptional circumstances the entry clearance officer would be acting improperly if he gave entry clearance without an undertaking. She submitted that without an undertaking a mere declaration of A's then ability and of his then willingness to maintain and accommodate the Claimant would not have been enough, and indeed "would have been of no value".

(c) There is no evidence to suggest that the Declaration was given insincerely as part of a scheme to obtain leave to enter by deception. Indeed, if there was no intention actually to sponsor the Claimant in accordance with the Immigration Rules then the validity of the grant of leave is called into question.

(d) Rule 317(i)(f) required the Claimant to be mainly dependent financially on relatives settled in the UK. The evidence showed that the Claimant had been supported by his relatives in England for 30 years, and therefore (i) there was no great burden on A in him giving an undertaking that he would continue to do so and (ii) it was inconceivable that the Claimant would have come here without some form of commitment from his relatives to maintain and accommodate him.

(e) The possibility of prosecution or recovery proceedings under sections 105 or 106 of the 1992 Act was not a reason for construing the Declaration strictly – i.e. in a manner which requires particularly clear wording to give rise to an undertaking:

(i) Miss Anderson submitted in oral argument that for the possibility of prosecution to be relied on in that way there would have had to be evidence that there was in fact a policy of prosecuting sponsors and that that policy would operate harshly on them. It was asserted in one of the written submissions made on behalf of the Secretary of State before the hearing that, on the contrary, "as the regulations clearly provide for the period during which benefits will not be paid where there is a sponsorship undertaking in force, no prosecution would be appropriate during that period. As the regulations also provide that benefit can be paid after the end of that period, it is dificult to see in what circumstances a prosecution would be appropriate after that period."

(ii) a change in the sponsor's circumstances would be a defence to proceedings for recoupment of income support under s. 106

(3) As to authority, the Secretary of State of course relied heavily on the decision of Miss Commissioner Fellner in CIS/47/02. In addition, it was submitted that the wording of the Declaration was for present purposes indistinguishable from that of the document in CIS/2816/2002. The full terms of that document are not set out in the decision, but the operative clause read: "I solemnly declare that the above named will be maintained and accommodated without recourse to public funds as defined in the current Immigration Rules for the duration of his/her visit to the United Kingdom." That was accepted by the claimant in

that case and by the Commissioner as amounting to an undertaking that the applicant would be so maintained and accommodated.

Relevant principles of construction

24. If Clause 2 of the Declaration does not contain a contractual promise, the Declaration is no more than a unilateral declaration or representation of current fact. If Clause 2 does give rise to a promise, then the Declaration was also an offer of a unilateral contract, or something closely analagous to it ("if entry clearance is granted, I agree that I will ....."). Unusually perhaps, the question of construction therefore determines whether the document is merely a unilateral declaration or whether it gave rise to a contract or something analagous to it. I accept that the Declaration must be in any event be interpreted in the light of relevant surrounding circumstances (the "factual matrix" referred to by Lord Wilberforce in *Reardon Smith Line v. Hansen-Tangen [1976] 3 All ER at p.575,* the principles in which in my view apply as much to documents of this sort as to contracts). Surrounding circumstances can include not only those actually known to both parties but (by virtue of the principle that documents intended to be relied on by others must be objectively construed) those of which knowledge "would reasonably have been available to the parties in the situation in which they were at the time of the contract." (Lord Hoffmann in *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 All ER 98 at p.114).

The submissions for the Claimant

25. These essentially adopted the reasoning of the Tribunal.

Analysis and conclusions

26. There is no doubt that, if the Declaration amounted to an "undertaking" within the meaning of s.115(10) of the 1999 Act, it was given "in pursuance of the immigration rules" – i.e. under paragraph 35 of the Immigration Rules. The question is whether it was an "undertaking".

27. In my judgment it is clear that the Tribunal was correct in holding that a document will not be "a written undertaking .....to be responsible for that person's maintenance and accommodation" unless it contains an agreement or promise by the sponsor to pay the cost of maintaining and either to provide or pay the cost of providing accommodation for that person. That is not disputed.

28. I have come to the conclusion that the Tribunal was further correct in holding that the Declaration does not contain such an agreement or promise. The crucial words in Clause 2: "I am able and willing to maintain and accommodate the applicant without recourse to public funds and in suitable accommodation" in my view amount to no more than a declaration by the Claimant of the facts (a) that his circumstances in March 1998 were such that he would be able to do so and (b) that his then state of mind was that he was and would be willing to do so. They do not in my judgment go further and contain a promise that A would maintain and accommodate the Claimant. In giving my main reason for that conclusion, I cannot improve upon the Tribunal's reasoning that "an assertion that an individual is able and willing to act in a particular way falls well short of a promise that he will act in a particular way." However, in deference to the arguments which have been put to me, I would elaborate with the following points.

29. First, if what was intended was that A should promise that he would maintain and accommodate the Claimant, there was a straightforward and clear way in which that could have been achieved, namely to use wording such as "I agree .....or I promise .....or I undertake .....". Documents containing contractual promises are routinely encountered by the average person in the course of everyday life, and the Declaration does not

make use of one of the forms of language obviously appropriate and routinely employed to create such a promise.

30. Secondly, the document describes itself in the heading and in Clause 1 as a "*Declaration*", and begins with the words "I SINCERELY AND SOLEMNLY *DECLARE* as follows". A person can (as, for example, in a statutory declaration, which must begin with those same words) "declare" matters of present fact known to him, including the state of his mind (which, in the well-known words of Bowen L.J. in *Edgington v. Fitzmaurice* (1885) 29 Ch.D. 459, "is as much a fact as the state of his digestion"). But the verb "declare" is much less appropriate if what is intended is a promise as to future conduct, as opposed to a declaration of present fact. The words "I declare that I am willing to maintain and accommodate ....." therefore to my mind suggest that what is being declared is the present state of the declarant's mind. That is not to say that it is necessarily impossible to introduce a promise with the words "I declare". In CIS/2816/2002, for example, the crucial clause read: "I solemnly declare that the above-named will be maintained and accommodated without recourse to public funds ..." However, the use of the words "will be" made clear that that declaration was not a declaration of present fact, but as to what the position would be in the future, and therefore that "I declare" can only have meant "I agree" or "I promise".

31. Thirdly, I would not attach to the use of the word "sponsor" in the heading to the Declaration the significance which the Secretary of State seeks to attach to it. (The words "Declaration to sponsor a dependent relative" are ungrammatical, but they seem to be a shorthand for "Declaration for the purpose of sponsoring" or "Declaration given in order to sponsor" a dependent relative). I think that "sponsor" there means no more than "support the application of", which indeed is what A expressly stated the purpose of the Declaration to be in Clause 1. Paragraphs 35, 317 and 320 of the Immigration Rules all use the word "sponsor", yet expressly contemplate that a person can be a sponsor without giving an undertaking or promise to be responsible for the maintenance of the applicant.

32. Fourthly, if Clause 2 had been intended to create a promise as to the future it seems likely that the period for which that promise was to last would have been stated. It is natural, before either giving or relying on a promise as to future conduct, to want to know for what period the promise is intended to last. (I note that the forms RON 112 and SET(F) expressly provide for what period the undertaking is to last, namely the duration of leave and any variation of it.) I do not of course say that as a matter of law a period must be stated in order for the promise to be valid: if the Declaration in the present case was an undertaking to maintain the Claimant, then since the duration of the promise was not stated it must have been for an indefinite period, and so endure for so long as A remained in the UK.

33. Fifthly, I of course acknowledge that it must have been clear to A that the immigration authorities were requiring his declaration of willingness to maintain and accommodate the Claimant in order to satisfy themselves that the Claimant would be maintained and accommodated without recourse to public funds. I accept the force of the Secretary of State's argument that it would have been obvious to A that if he could at any time in the future (for whatever reason) simply change his mind and say that he was no longer willing to do accommodate and maintain the Claimant, the declaration would be of less use for that purpose than if he had promised to do so and could be subject to some sanction if he did not in fact do so.

34. However, I am not prepared, on the information before me, to accept that the entry clearance officer would necessarily have been acting improperly in the present case if he had granted entry clearance without obtaining an undertaking from A. Miss Anderson did not cite to me any authority which established that proposition. As I have said, the Immigration Rules

appear to be on the basis that the sponsor may, not must, be required to give an undertaking, and I do not see why the cases where it would be proper not to ask for an undertaking should be confined to the wholly exceptional sort of situation of which Miss Anderson gave an example (para 23(2)(b) above). Rule 320 requires that entry clearance should "normally" be refused where a person who has been requested to do so refuses to give an undertaking, but that is of course dealing with the situation where the entry clearance officer has asked for an undertaking, not whether he need ask for it in the first place. Further, even if it is the law that save in wholly exceptional cases entry clearance and leave to enter must be refused unless an undertaking is obtained, that is not in my view a circumstance which can be taken into account in determining the meaning of the Declaration. I agree that the requirement in Rule 317 that the applicant for entry will be maintained and accommodated without recourse to public funds, is a relevant circumstance. The Declaration must therefore be construed as intended to help satisfy the entry clearance officer that would be the case. But there is in my judgment no reason why A should be taken to have been aware that as a matter of law (if indeed it is the law) the entry clearance officer could not be satisfied that that would be the case without an undertaking, and that a declaration as to his then financial position and state of mind would be insufficient. I also bear in mind here that it would have been apparent to A that even with an undertaking from him it was extremely uncertain whether the Claimant would continue to be maintained and accommodated without recourse to public funds. Bearing in mind, in particular, that at the date of the Declaration A was aged only 21 (p.86), and was single and living with his parents, there were any number of changes of circumstances (e.g. losing his job, acquiring additional responsibilities through marriage or having children, sale of the house which was owned by his mother) which might have rendered it difficult or impossible for him to perform such an obligation.

35. I think that a person in the position of A, reading and signing the Declaration, would be uncertain about whether he was being asked actually to promise that he would maintain and accommodate the Claimant, and as to what the position would be if (for whatever reason) he changed his mind about his declared willingness to do so. Miss Anderson submitted that there was no reason why I should strain to reach a construction which favours the Claimant. However, for the reasons I have given above I think that the natural meaning of the words favours the Claimant. Further, I think that A was entitled to say that he should not be held to be subject to an undertaking unless it had been given in reasonably clear language. I say that for two main reasons.

36. First, the Declaration bears on its face the signs of being an adaptation of a standard form (the wording in Clause 1 "in each case he is related to me as stated" has clearly been taken from a standard form also appropriate for use where there is more than one applicant) drafted by or with the assistance of lawyers (see the words "I ..... SINCERELY AND SOLEMNLY DECLARE" and the references at the end to the "said" applicant and the "said" premises). Secondly, an undertaking to maintain and accommodate another person for an indefinite period is potentially an extremely onerous one. A was entitled to think that, if he was being asked to undertake an onerous obligation of this nature, a document drafted on behalf of the immigration authorities would say so in terms which were clear.

37. I would wish to make two further points in relation to what said in the previous paragraph. First, I do not think that it is proper to take into account, in construing the Declaration, the specific fact (see para. 18 above) that there were official forms of undertaking which could have been used if an undertaking had been intended. That was not a fact which would reasonably have been within the knowledge of A and so in my view be should be left out of account. Secondly, I doubt whether it is particularly material, in construing the Declaration, to consider the precise circumstances in which a person giving an undertaking could and could not be sued under s.106 of the 1992 Act for the amount of income support

paid to the applicant or could or could not be prosecuted under s.105 of that Act. Even if it be assumed that the terms of those provisions must be taken account, as material reasonably available to A, in construing the Declaration, the fact remains that on any view an undertaking in the terms suggested would have been an onerous one which plainly could have resulted in him being sued, and possibly even prosecuted, if it were not complied with.

38. Finally, I have of course carefully considered the reasoning in CIS/47/02, given after a hearing at which the matter was fully argued by counsel for both parties. However, the whole of the reasoning in paragraphs 27 to 33 ("my conclusions") of that decision seems to me to be underpinned by the Commissioner's statement in paragraph 30 that the for present purposes identical wording in that declaration contained "what to any lawyer or officer administering benefit would appear (pace Mr. Cox) to be a promise as to the future." If I had taken that view of the wording of the Declaration, my conclusion would of course have been different, but I do not. I think that most lawyers (and the Tribunal chairman and I are certainly among that number) would regard the words "I declare that I am able and willing ....." to be an unusual and indeed inappropriate way of creating a promise as to the future. I recognise that if there are, as Miss Anderson's submissions strongly tended to suggest, other documents which have been signed in identical or very similar form, the effect of my decision will be to create uncertainty as to the effect of such a document on a claim for income support during the 5 year period. Had I regarded the matter as finely balanced, it might well have been appropriate for me simply to follow CIS/47/02. However, at the end of the day I am satisfied that that decision was wrong and that I should not follow it. I feel that it would be particularly unfair to the Claimant to do otherwise where he has the benefit of a Tribunal decision given before the decision in CIS/47/02.

Postscript

39. I regret that it is now nearly 2 years since the Tribunal's decision. This has been due to a combination of factors. The appeal to a Commissioner was made some 6 months after the decision. The hearing before me was originally due to take place in November 2003, but was postponed at the Claimant's request so that a transcript of the decision in *Begum* (see below) could be obtained. There was then further delay whilst further written submissions were made, and the hearing eventually took place on 14 June 2004.

(Signed) Charles Turnbull
Commissioner

24 June 2004