



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/22449/2014

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 12th February 2015

On: 21st April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Mr Chao Li
(no anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Revill, Counsel instructed by Astor Visas

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of China date of birth 9th June 1982. He appeals with permission¹ against the decision of the First-tier Tribunal (Judge T. Jones) to dismiss his appeal against a decision to refuse to vary his leave and to remove them from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999².

¹ Permission granted by First-tier Tribunal Ransley 16th October 2014

² Decisions dated 30th April 2014

2. The Appellant came to the United Kingdom in February 2002 as a student and had remained here ever since. The application that prompted the Respondent's decisions had been for indefinite leave to remain following ten years' continuous lawful residence, but it had been conceded before the First-tier Tribunal that there had been a break in his lawful leave between 2009 and 2011 and that the appeal could not succeed with reference to the Immigration Rules. The case had proceeded on Article 8 grounds alone.
3. The basis of the Appellant's case was his established private life in the UK but also what he considered to be his family life: he is in a long-term relationship with a Ms Wu, a Chinese woman who had recently acquired British nationality. Although they did not live together this was a committed relationship and they hoped to marry in the future.
4. The First-tier Tribunal did not accept that the relationship with Ms Wu fell under the rubric of 'family life' [paragraph 12]. Although it was accepted that they are "boyfriend and girlfriend" it was found that there was no intention to live together other than when it is financially expedient to do so. The Judge found Ms Wu to be "cool" about the prospect of living with the Appellant. Having made that finding the Tribunal went on to consider proportionality "as if family life in the United Kingdom had been established on their claim at its height". The claim fell outwith the Rules. Although there was an on-going relationship there was no intention for it to develop. If that changed in the future she could go to China with him or it could continue by "modern means of communication". They both have family members in China to whom they could return. The Appellant has been in the UK for a long time but he has never had settled status and has known that throughout the time that he has spent with Ms Wu. He would not have any difficulty in re-establishing his private life in China. The determination concludes that in all the circumstances his removal could not be said to be disproportionate.
5. The grounds of appeal are that the determination contains the following errors of law:
 - i) Failure to properly assess the substantive quality of the relationship. It was (implicitly) accepted that they had been together since 2002. The Judge failed to give consideration to relevant authority on whether there can be a family life in the absence of co-habitation: see Kroon v The Netherlands (1995) 19 EHRR 263.
 - ii) In finding that any family life could be replicated in China the Tribunal erred in failing to consider whether Ms Wu would want to relocate or whether she could in fact relocate, she having acquired British nationality needing a visa for China. Overall there was a failure to consider the "reasonableness" of Ms Wu relocating.

iii) The finding that the relationship could continue via “modern means of communication” was irrational given the evidence that the couple visited each other (from their respective cities of residence, Leeds and Birmingham) on a regular basis.

6. The Respondent submits that the decision could not have been otherwise. Even taken at its highest this is a couple who live apart in the UK. If their relationship reaches a point where they demonstrate commitment to each other by, for instance, marriage or co-habitation, an application can be made for entry clearance under the Immigration Rules.

No Error of Law

7. The primary focus of Ms Revill’s submission was that insufficient attention had been paid to the quality of the relationship. Article 8 requires decision-makers to look beyond form at substance, and, it was submitted, this was a relationship of duration and quality akin to that discussed in Kroon.

8. The facts of Kroon were very different. The case was primarily concerned with the discriminatory practice in Dutch civil law of mandating that a child’s father be recorded as the man who is married to his mother, whether or not that was the true biological father. Ms Kroon had four children to a man to whom she was not married yet the Registrar of Births insisted that their father be named as her long estranged husband, whom she had not seen for years. The principle which Ms Revill relies upon is the – apparently uncontentious – point that the court accepted that the children in the case had a family life with their biological father even though he was not married to, or even living with, their mother. The court recognised that ‘family life’ is a matter of substance rather than formality. For example, family life can exist between a couple who are engaged but not yet married, the engagement sufficing as a demonstration of their commitment.

9. The determination does not refer to Kroon nor is it clear whether the Tribunal had been referred to it. I cannot however see where the Tribunal had failed to apply the principle for which this case is cited. It is clear from the determination that the Tribunal was concerned with the substantive quality of the relationship. Particular emphasis is placed on a) the fact that these two young people have chosen not to live together except when it was financially expedient to do so and b) that there are no apparent plans to do in the future. The Tribunal was entitled to take into account, for instance, the fact that Ms Wu was “cool” about the prospect of living with the Appellant. That was relevant to the Tribunal’s assessment of the quality of the relationship and the level of commitment between the two. In her oral submissions Ms Revill criticised the Tribunal’s failure to expressly accept that they had been boyfriend and girlfriend for 12 years. I would agree with the grounds [at 6] that the Tribunal does not dispute the

evidence that this was the case. I cannot find any justification for thinking that the First-tier Tribunal ignored the length of this relationship. It is apparent from the determination that the Judge was aware that they claimed to have got together in 2002 [see for instance paragraphs 4 and 6]. I do not find any error in approach to the question of 'family life'.

10. The remaining grounds are concerned with the approach taken to proportionality. Since I have upheld the Tribunal's findings on whether this relationship amounted to a 'family life' I can deal with these briefly. It may be that the references to Ms Wu being able to accompany the Appellant to China were insufficiently reasoned in light of her British nationality [see Sanade [2012] UKUT 00048 (IAC)] and the fact that her right to enter China may have been affected by the acquisition of that status. I agree that references to the "modern means of communication" are very often unfortunate and poorly reasoned. In this case however the evidence was that this couple lived in different cities and that at the date of the appeal were only seeing each other every couple of months³. Their relationship was, unusually, conducted primarily by "modern means of communication" such as "chatting applications". The point the Judge was making was that this could continue. The interference amounted to not being able to see each other every couple of months. I find it difficult to envisage the circumstance where that could be said to be a disproportionate interference with family life. As Mr Avery rightly notes, if the relationship develops to the point where the parties become engaged or get married, it will be open to the Appellant to apply for entry clearance as Ms Wu's partner.
11. For those reasons, and despite Ms Revill's very well made submissions, I find that the decision contains no error of law.

Decisions

12. The determination of the First-tier Tribunal contains no error of law and it is upheld.
13. I was not asked to make any direction for anonymity and I see no reason on the facts why one should be made.

Deputy Upper Tribunal Judge Bruce
10th April 2015

³ See for instance Ms Wu's witness statement dated 19th December 2013, confirmed in Ms Revill's submissions