



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/05554/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 June 2015

Decision and Reasons Promulgated
On 23 June 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr YUELAI LIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, Counsel

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

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Deputy Upper Tribunal Judge Saini on 6 May 2015 against the determination of First-tier Tribunal Judge Chamberlain who had dismissed the Appellant's appeal against the refusal on 21 January 2014 of his

entry clearance application made under paragraph 319H of the Immigration Rules as a dependant relative and on human rights grounds (Article 8 ECHR family life) in a decision and reasons promulgated on 25 November 2014.

2. The Appellant is a national of China, born on 20 February 2004. The Appellant was in the United Kingdom without leave at the time of the First-tier Tribunal hearing, a situation which continues. The judge found as a fact that the Appellant's mother, in the United Kingdom as a Tier 1 (Entrepreneur) Migrant, did not have sole responsibility for the Appellant and that there were no serious and compelling family or other circumstances which made his exclusion undesirable. As to Article 8 ECHR, the judge found that the Appellant's exclusion was proportionate.
3. Permission to appeal, refused by First-tier Tribunal Judge Grimmett, was granted by Deputy Upper Tribunal Judge Saini because he was considered that it was arguable that the judge had failed to consider adequately the issues of the allegedly absentee father, sole responsibility and proportionality under Article 8 ECHR.
4. Standard directions were made by the tribunal, indicating that the appeal would be re-decided immediately if a material error of law were found. A rule 24 notice had been filed on the Respondent's behalf, opposing the onwads appeal.

Submissions

5. Mr Lewis for the Appellant relied on his skeleton argument, the grounds of onwads appeal and the Upper Tribunal's grant of permission to appeal. In summary he contended that the judge had failed to take into account the fundamental nature of the Appellant's mother's position in the United Kingdom, as a substantial investor and employer of five people. The mother could not remain here without her son. This aspect of immigration control and its relation to the public interest had been considered by the Court of Appeal in UE (Nigeria) [2010] EWCA Civ 975. The public interest was not a fixed entity. This could also be seen as a serious and compelling factor which the judge had not addressed.
6. Counsel further submitted that the judge's findings in relation to the rôle of the Appellant's father were inadequate. The judge had

not taken into account the objective evidence about employment conditions of the police in China and had ignored evidence about the problems which the father faced as the result of his employment. TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 had not been correctly interpreted, given that this was in effect a family split situation. The determination should be set aside and the decision remade in the Appellant's favour.

7. Mr Avery for the Respondent relied on the rule 24 notice. The judge had taken a proper approach, as could be seen from the Entry Clearance Manager's Review which had been the First-tier Tribunal's starting point. The Appellant's mother was seeking to attack the judge's findings of fact which had been open to her on the evidence. There was no error of fact. The Appellant's mother simply disagreed with the decision. It was relevant that she had acted without regard to the law and that had correctly informed the judge's credibility assessment of her evidence. There was no error of law. The determination should stand.
8. In reply, Mr Lewis contended that all relevant factors had not been taken into account.
9. The tribunal indicated at the conclusion of submissions that it reserved its determination, which now follows.

No material error of law finding

10. In the tribunal's view the grant of permission to appeal in the Upper Tribunal was best described as generous. The grounds of onwards appeal were little more than an attempt, as so often seen in the Immigration and Asylum Chamber, to dress up a difference of opinion or a disagreement with a First-tier Tribunal Judge's proper findings as an error of law.
11. Mr Lewis's assertion that the First-tier Tribunal determination failed to take into account all relevant factors was extravagant and unjustified. He identified no misapprehension of any fact by the judge, nor any error in the case law accurately cited. The Appellant's mother's business activities in the United Kingdom were all a matter of choice on her part and created no obligation on the state to meet her personal wishes with regard to her family. UE (Nigeria) (above) is of no relevance to the requirements set out in

paragraph 319H and was in any event decided before the changes to the Immigration Rules introduced on 9 July 2012, which substantially changed the scope of Article 8 ECHR: see, e.g., Gulshan (Article 8 – new rules – correct approach) [2013] UKUT 00640 (IAC), MF (Nigeria) [2013] EWCA Civ 1192 and SS (Congo) [2015] EWCA Civ 387. The judge’s conclusions about the relevance of the mother’s business set out at [18] and [19] were fully open to her. The judge was similarly fully entitled to reach her conclusions as to sole responsibility and the absence of serious and compelling family or other circumstances: see [11] to [17] of the determination. Given the Appellant’s mother’s unlawful behaviour, it was open to the judge to treat her evidence with reserve. There was no reliable evidence that the Appellant’s father could not care for him with assistance of appropriate child care, no different it might reasonably be thought from the situation of the Appellants’ working mother, who has to travel in connection with her business.

12. The judge gave full, careful and separate consideration to the Article 8 ECHR family life issues which had been raised, including the best interests of the Appellant. The judge again considered the “public interest” questions argued to be relevant on the Appellant’s mother’s behalf and the judge’s conclusions as set out at [38] of the determination are unimpeachable. If the Appellant’s mother wishes to make representations to the Secretary of State outside the Immigration Rules based on the value to the United Kingdom of her business activities that is a matter for her, but it is not a compelling or compassionate circumstance which required the consideration of the exercise of discretion outside the Immigration Rules.
13. The tribunal finds that there was no error of law in the full and careful determination and there is no proper basis for interfering with the experienced judge’s decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell