IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/46225/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 March 2016	**On 13 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PEI-JUI LAI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss S Sreeraman, Senior Home Office Presenting Officer
For the Respondent: Mr Walsh, Counsel, instructed by Farani-Javid -Taylor Solicitors

DECISION AND REASONS

The Appeal

1. Although the appellant is the Secretary of State for the purposes of this decision I refer to the parties as they were in the First-tier Tribunal. This is

a resumed hearing. The Upper Tribunal at a hearing on 22 December 2015 found an error of law and set aside the decision of the First-tier Tribunal promulgated on 8 June 2015. The Decision on Error of Law and Directions is appended to this Decision and Reasons.

Remaking the Decision

2. I rely on the background of this case set out in the appended decision. Although I had been initially disposed to remake the decision on the available evidence, as indicated in the Decision on Error of Law and Directions I concluded that it should be relisted for a further hearing due to the unavailability of all the witnesses. I gave directions that any evidence to be relied on be filed and served with the Upper Tribunal.

The Hearing

3. Mr Walsh relied on a consolidated bundle of evidence from pages 1 to 146 with updated witness statements. In addition a supplementary bundle with further updated witness statements had been submitted on behalf of Miss Pei-Jui Lai prior to the resumed hearing. This contains updated witness statements for the appellant, for her partner Mr Timothy Gordon Russell Royall and for Lee-Sham Wong.

4. Mr Walsh indicated that he intended to call the appellant, her partner, Mr Royall and the appellant's sister, Yi-Chun Lai. Mr Walsh also indicated that he did not propose to call any of the remaining witnesses (although a number of them were present in court) and relied on their witness statement evidence.

5. The appellant and witnesses gave evidence in English and were cross-examined on that evidence. The oral evidence together the submissions of both representatives are set out in full in the Record of Proceedings. At the end of the hearing I reserved my decision which I now give.

The Law

6. Paragraph 276ADE provides including as follows:

> "276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> ....
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

Findings

7. Mr Walsh relied on his skeleton argument. He indicated that he did not have instructions to concede the appeal under the Immigration Rules but nevertheless stated that this was not his main argument by reference to his skeleton argument.

Immigration Rules

8. In considering the appeal under the Immigration Rules, although this point was not specifically pursued by Mr Walsh, the appellant's argument (including in her witness statements and the witness statements in support of her appeal) was that there were very significant obstacles to her integration into Taiwan.

9. I have taken into consideration all of the detailed information and evidence which was before me. In summary, however, the appellant contends that she has been resident in the UK since the age of 13 and has established a number of close ties in the UK as well as having her older sister, a British national living in London (with whom she previously resided). Her entire way of life and career path had been geared towards remaining in the UK, albeit unintentionally. It has been the appellant's case that her professional qualifications (in law) count for little if anything in Taiwan. As set out in the Decision on Error of Law and Directions I was referred by the respondent to the respondent's guidance in the Immigration Directorate Instructions in relation to the meaning of very significant obstacles. This guidance was dated August 2015 and I repeat it here:

> "When assessing whether there are 'very significant obstacles' to integration into the country to which they would have to go if required to leave the UK' the starting point is to assume that the applicant will be able to integrate into the country of return unless they can demonstrate why that is not the case. The onus is on the appellant to show that there are very significant obstacles to their integration, not on the decision maker to show that are not."

10. The guidance continues:

> "A very significant obstacle to integration is something which would prevent or seriously inhibit the applicant from integrating into the country of return. The decision maker is looking for more than obstacles. They are looking to whether there are 'very significant' obstacles which is a high threshold. Very significant obstacles will exist where the appellant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return will entail very serious hardship for the applicant."

11. I have reminded myself that this is guidance. However I am not satisfied that the evidence relied upon by the appellant demonstrates that there are such obstacles to her reintegration to Taiwan. Although there was much evidence in relation to the appellant's claimed difficulties, including that she was not yet qualified as a lawyer in the UK and the difficulties she would have in so qualifying in Taiwan, that is not the test before me. The appellant is a highly educated individual. She has a number of qualifications in the UK, having studied here since the age of 13. She speaks English fluently. She has also gained a number of skills through her current employment as a trainee solicitor and the evidence indicates that she has also worked including as an intern in the USA and in Taiwan. She indicated in her oral evidence that she worked for a law firm in Taiwan in an administrative role. This was a short-term internship over a number of months.

12. In my view the test in paragraph 276ADE(1)(vi) constitutes a high threshold and clearly is a more demanding test than the previous requirement to show “a lack of ties” to the claimant’s country of return. I have considered the meaning of integration: an individual returning to their home country has to be in a position to participate in life in that country. I have taken into consideration all the evidence in relation to the appellant's stated difficulties.

13. Although I find the appellant to be generally credible in her evidence I am of the view that she sought to over-emphasise the degree of her claimed lack of fluency in Mandarin. The appellant lived in Taiwan until the age of 13 and attended school there. She also told me in oral evidence that whilst in the UK she had passed both a GCSE and an “A” level (it would appear without attending lessons) in the UK in Mandarin. She told me that she obtained an A in “A” level Mandarin. She also confirmed that she speaks with her parents (who reside in Taiwan) through the medium of Mandarin and her sister in oral evidence confirmed that this was the case. Both the appellant and her sister confirmed that they speak to each other with a combination of English and Mandarin, although again I find the appellant's evidence tended towards exaggeration as she initially indicated that it was more English than Mandarin whereas this contradicted her sister’s statement.

14. I accept Miss Sreeraman’s submission that the test is not whether the appellant can obtain employment which is on a par with her current employment in the UK. The test is whether there are very significant obstacles to her integration into Taiwan.

15. Although it may well be that the appellant's Mandarin is not currently at the level of someone who is currently resident in Taiwan and speaking and using the language on a daily basis, nevertheless the appellant continues to use the language and has not provided any adequate information that might suggest that her current level of language would be a barrier to obtaining employment in Taiwan. Indeed she confirmed that she was able

to obtain employment as recently as 2010 on a short term basis when she undertook voluntary employment for a law firm in Taiwan.

16. Although the appellant repeatedly indicated that she believed it would be difficult to obtain any employment, again there was no adequate evidence to support this and it is notable that the appellant has made no enquiries as to what employment she might be able to obtain in Taiwan either in the legal field, for example as a paralegal or otherwise. In addition again, the test is not one of employment, it is of integration. The appellant continues to have her parents in Taiwan. All the evidence before me confirms that her parents continue to be very supportive of her. The appellant is currently living rent free in a property owned by her parents in the UK. She did not indicate that there would be any difficulty in returning to the family home in Taiwan should she need to. Given the support that her family have previously provided to the appellant, I am not satisfied that there would be any barriers to her so doing. As relied upon by the respondent the appellant had provided information confirming that there are international law firms in Taiwan. Although it may well be the appellant might have to take further qualifications in order to obtain employment at the level she wishes in these or other firms, and it may well be that this could arguably constitute an obstacle to her reintegration into Taiwan, I am not satisfied that it constitutes a very significant obstacle.

17. The appellant's sister gave evidence as to the emotional support that she provides to the appellant and indeed she confirmed that the appellant provides similar emotional support to her. There was also evidence that the appellant has in the past suffered and taken medication in relation to difficulties with her mental and emotional health. She confirmed that she was not currently taking any medication and had not been doing so for approximately a year. However she continues to attend counselling.

18. The appellant in oral evidence attempted to suggest that it would be difficult to obtain such counselling in Taiwan. However she also confirmed that she had previously attended counselling in Taiwan on a temporary basis during visits home. Although I accept that the appellant may have developed a relationship with her counsellor in the UK, there was no adequate information or evidence to suggest that she could not develop a similar relationship with a counsellor and/or other professionals, if such counselling or other treatment was deemed necessary.

19. I am satisfied that the appellant has retained significant social, family and cultural ties to Taiwan. Although she has not visited there since 2012, her travel history indicates significant return trips to Taiwan throughout the appellant's studies and life in the UK, including for extended periods. This included periods to obtain support and assistance from her parents due to the difficulties that the appellant was then experiencing.

20. The appellant and her sister confirmed that they have extended family in Taiwan and the appellant's sister confirmed that she visits Taiwan every

year. The appellant's parents have also continued to visit the appellant and her sister in the UK, it would appear on an annual basis. Although again the appellant suggested that the family were not particularly close, it would seem that they do provide support, emotional and financial if necessary, where needed to each other.

21. The appellant has a further sister in Taiwan who also was educated in the UK. The appellant told me this sister had also obtained a number of qualifications in the UK and had returned, after marrying a Taiwanese national and was living and working in a part of Taiwan, separate from their parents. Although the appellant indicated that she was not currently in regular contact with this sister, there was no adequate information or evidence to suggest that this sister could not (together with the appellant's parents) provide support, either emotional or financial if such were needed, to the appellant to assist in her integration.

22. Although the appellant indicated that she did not wish to be reliant on her parents, the appellant was financially supported by her parents until she commenced her current employment, and as noted above, is currently living rent free in their property.

23. In assessing whether there are very significant obstacles to the appellant's integration into Taiwan, I have considered that the appellant is also currently in a relationship with a British national. Her partner gave evidence before me. They have been in a relationship for over a year and she indicated that her partner moved in with her in approximately September 2015 (the relationship commenced in October 2014).

24. Her partner indicated that he would be happy to support any application that the appellant might make to return to the UK. Both the appellant and her partner indicated that they did not wish to continue the relationship in Taiwan. However, I am not satisfied it has been demonstrated that there would be significant hardship were the appellant to return for a temporary period to reapply to join her partner if that is what they chose to do.

25. In addition, Mr Royall's objection to moving to Taiwan seemed primarily concerned with his current employment and the fact that it was based on face to face contact in the UK. He also indicated that he did not speak the language and may have difficulties in obtaining employment. However, there was no adequate information to suggest that any enquiries had been made as to potential employment for Mr Royall if the couple decided to continue the relationship in Taiwan.

26. I was also referred by Miss Sreermanan to the Court of Appeal case of **Agyarko & Ors, R (on the application of) v SSHD [2015]** and it was her submission that the mere fact that the appellant has a British citizen partner does not amount in itself to very significant obstacles to living abroad. I have also taken into consideration that the appellant could maintain any relationship through visits in the interim period if necessary.

27. For all the reasons set out above I am not satisfied that the appellant has demonstrated that she can qualify under paragraph 276ADE or otherwise under the Immigration Rules in relation to private life. As noted above, the thrust of Mr Walsh's skeleton argument, which was based on Article 8 outside of the Immigration Rules, would support that conclusion.

Article 8

28. Miss Sreeraman submitted that there was no evidence of compelling or compassionate circumstances which would warrant consideration of Article 8 outside of the Rules or that there was any circumstances not adequately addressed under the Immigration Rules. I have considered the relevant case law including the Court of Appeal in **SS (Congo) and Others [2015] EWCA Civ 387**.

29. I have also considered that Article 8 is not a general dispensing power. **Patel & Others v Secretary of State for the Home Department [2013] UKSC 72** applied.

30. In terms of family ties, Miss Sreeraman conceded that the appellant had lived with her sister in the UK. It was her submission that any family ties that they had did not go beyond normal family ties. Although I accept that the appellant and her sister did live together for a number of years in the UK, they are both adults. They both now live with their own respective partners. Both the appellant and her sister in oral evidence confirmed that they see each other now approximately once a week. I have taken into consideration that the appellant and her sister gave evidence that they support each other emotionally. However, I am not satisfied that it has been demonstrated that the ties that exist between them go beyond the normal family relationships between adult siblings. I am therefore not satisfied that family life is engaged in terms of Article 8.

31. In relation to the appellant's partner, I accept that they have been living together for a number of months. Although there are not currently any plans to marry and the couple are not engaged, they both indicated that this was their future intention. I note that the appellant's partner currently pays rent to the appellant's parents. The couple have been going out for less than two years. It is arguable that their relationship does not yet constitute family life. However, on balance I accept that it may do so and I note that Miss Sreeraman conceded that it did. I therefore proceed on the basis that it does. However, I am not satisfied that the appellant's removal would constitute a disproportionate interference with any family life and I consider in the alternative if I am wrong in relation to the appellant's relationship with her sister, I have also considered that removal will not be a disproportionate interference with that relationship.

32. I have applied the five stage test in **Razgar**. As noted above, I am satisfied that family life exists and I am also further satisfied that the appellant has established private life in the UK. I am satisfied that removal may interfere with that private and family life and the

consequences of such interference may be of such gravity as to potentially engage Article 8. Such interference is in accordance with the law as the appellant does not meet the requirements of the Immigration Rules and is for the legitimate aim of the maintenance of immigration control. I therefore go on to consider the final test in **Razgar**, whether such interference is proportionate.

33. In doing so, I must take into account Section 117 of the Immigration Act 2002, the public interest considerations applicable in all cases. I remind myself that the maintenance of effective immigration controls is in the public interest. The appellant does not meet the requirements of the relevant immigration rules. In relation to Section 117B(2) I accept that the appellant is able to speak English. In relation to 117B(3) I further accept that the appellant is financially independent (there was no indication that the appellant is in receipt of benefits). The appellant is currently in employment and would if necessary receive financial support from her parents. Therefore there is no weight to be given out the public interest in relation to either Section 117B(2) or (3). However, Section 117B(5) indicates that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. I have also

34. Although Mr Walsh submitted that I should give weight to the fact that the appellant had been in the UK for a considerable length of time, despite his submissions to the contrary, I find this to be a near-miss argument in relation to the long residence Immigration Rules. As set out in my error of law decision that finding by the First-tier Tribunal stands, in that the appellant could not meet the residence requirements in relation to long residence. I am required by statute to give little weight to the appellant's private life. Nevertheless I have given weight to the fact that she has professionally developed in the UK as a trainee lawyer. I have given weight to the evidence that the appellant believes that her professional development would be severely impeded should she have to return to Taiwan. I have also given weight to the evidence before me including the witness statement evidence and the oral evidence of the appellant's close ties to friends and family in the UK. I have also given weight to the evidence before me that the appellant has suffered from anorexia and depression in the UK and continues to receive counselling.

35. Mr Walsh in his skeleton argument submitted that under **SS (Congo) [2015] EWCA Civ 387** in cases where family life is built up on the back of a precarious immigration status the test for Article 8 is exceptional circumstances. In other contexts such as where entry clearance is sought to continue family life previously formed the test is compelling circumstances.

36. I am not satisfied that there are any compelling or exceptional circumstances in the appellant's case, having considered all of the evidence in the round. In relation to the appellant's family life with her partner, this was formed at a time when the appellant's partner was aware

that the appellant, although lawfully in the UK, did not have permanent status in the UK.

37. Miss Sreeraman provided information in relation to processing times at entry clearance posts in Taiwan which confirms that all applications are processed within ten days. Although she conceded that it may well be that the appellant cannot yet meet the requisite requirements for entry, for example as a partner, I am not satisfied that this would be a disproportionate interference with any family life that the appellant has developed with her partner or with her private life, if she chooses to return to the UK. I accept that her relationships could be maintained in the interim through visits.

38. The appellant and her partner have been in a relationship for a relatively short time. The appellant's partner indicated that he would not be prepared to live in Taiwan. It was not clear what it was intended would happen to the relationship if the appellant is unable to return to the UK, which casts some doubt as to the strength of the relationship. Although it may cause some difficulties for the appellant's partner to relocate to Taiwan, I am not satisfied that it would be disproportionate interference for him to do so if that is what the couple decide.

39. The couple have no children. The appellant’s emotional health difficulties are currently well managed with counselling and there is no evidence of any hardship in requiring the appellant to return home to Taiwan and make an application to re-enter the UK, if they wish to continue the relationship in the UK.

40. I am not satisfied that the appellant's removal would be a disproportionate interference with her family and private life in the UK.

Decision

41. The appeal of the Secretary of State is allowed and the decision of the First-tier Tribunal is set aside to the extent set out at paragraph 20 of the Decision on Error of Law and Directions appended to this decision. I remake the decision dismissing the appellant's appeal under paragraph 276ADE and under Article 8.

42. No anonymity direction was sought or made.

Signed Date

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT

FEE AWARD

As the appeal is dismissed no fee is payable.

Signed Date

Deputy Upper Tribunal Judge Hutchinson

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/46225/2014

THE IMMIGRATION ACTS

Heard at Field House
On 22nd December 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS PEI-JUI LAI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Fijiwala, Senior Home Office Presenting Officer
For the Respondent: Ms Seehra, Counsel instructed by Farani Javid Taylor Solicitors

DECISION ON ERROR OF LAW AND DIRECTIONS

Introduction

1. This is an appeal by the Secretary of State against a decision of Judge of the First-tier Tribunal Veloso in a decision promulgated on 8th June 2015 to allow Miss Pei-Jui Lai's appeal. However, I shall refer to the parties as they were before the First-tier Tribunal.

2. The Appellant Miss Pei-Jui Lai is a citizen of Taiwan born on 3rd July 1989. The Appellant first entered the UK on a student visa on 23rd September 2003. The chronology of the Appellant's stay in the UK is summarised at paragraph 2 of Judge Veloso's decision as follows:

> 23rd September 2003 the Appellant entered the United Kingdom on a student visa valid until 31st August 2005

16th July 2005	the Appellant returned to Taiwan
27th August 2005	the Appellant entered the United Kingdom on a student visa valid until 31st October 2006
1st July 2006	the Appellant returned to Taiwan
26th August 2006	the Appellant entered the United Kingdom on a student visa valid until 31st October 2008
14th July 2008	the Appellant returned to Taiwan
17th September 2008	the Appellant entered the United Kingdom on a student visa valid until 31st October 2011
30th October 2011	the Appellant returned to Taiwan
2nd December 2011	the Appellant entered the United Kingdom on a visitor's visa valid six months
21st December 2011	the Appellant returned to Taiwan
6th January 2012	the Appellant entered the United Kingdom on a Tier 4 (General) Migrant visa valid until 15th June 2012
17th July 2012	the Appellant returned to Taiwan
21st August 2012	the Appellant entered the United Kingdom on a Tier 4 (General) Migrant visa valid until 14th August 2013
August 2012	the Appellant was awarded her Diploma in Law from UCL
8th August 2013	the Appellant applied for indefinite leave to remain on the grounds of ten years' long residence
18th December 2013	the Respondent refused the Appellant's application for indefinite leave to remain
14th January 2014	the Appellant lodged Grounds of Appeal against the Respondent's decision
June 2014	the Appellant completed her legal practice course
1st August 2014	the Tribunal allowed the Appellant's appeal in order to permit the Respondent to consider the correct criteria
September 2014	the Appellant started work for Fletcher Day Solicitors.

3. The Respondent refused the Appellant's application on 7th November 2014 for the reasons set out in the refusal letter of that date. The Respondent's Notice of Immigration Decision is also dated 7th November 2014 in which

the Respondent refuses to vary leave to enter or remain and decides that the Appellant should be removed from the UK by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

4. The appeal came before Judge Veloso, who considered first the Appellant's application under paragraph 276B of the Immigration Rules. Paragraph 276B(i)(a) requires that

> "… has had at least ten years' continuous lawful residence in the United Kingdom."

5. The Respondent in the refusal letter asserted that the Appellant had been outside the UK for 637 days whilst her own representative confirmed that the absence totalled around 600 days.

6. Judge Veloso found that the Appellant had failed to show that she had been absent for less than the maximum number of days over the qualified period and therefore had failed to show that she had continuous residence as required by paragraph 276B(i)(a). The judge has set out that for the purposes of both paragraphs 276B and 276ADE, paragraph 276A(a)(v) considers "continuous residence" to have been broken if an applicant

> "has spent a total of more than eighteen months absent from the United Kingdom during the period in question."

7. Paragraph 276A(c) states that:

> "'lived continuously' and 'living continuously' mean 'continuous residence'."

8. However, the judge in considering the Appellant's private life under paragraph 276ADE found that it fell to be considered under paragraph 276ADE(vi) and found that there were "very significant obstacles" to the Appellant's integration into her home country of Taiwan if required to leave the UK.

9. The Respondent was granted permission to appeal. The Grounds of Appeal argue that the decision of the First-tier Judge contained inadequate reasons for the finding of "very significant obstacles to the Appellant's integration" into her home country of Taiwan, and that the judge ultimately reached a conclusion not open to him on the evidence and therefore the decision was perverse.

10. The grounds set out that at paragraph 33 the judge appeared to accept the Appellant's claim that her career prospects would be severely hampered by her return to Taiwan, although the judge failed to explain why this would be the case; which, it was argued, was perverse on the facts. The judge also accepted in the same paragraph that the Appellant's Chinese is "no longer very good" and that this would form a further barrier to her integration. However, given that the Appellant had lived permanently in Taiwan until she was 14 and failed to meet the long

residence Rules because of the long holidays she had spent there between school terms it was argued that it was not clear why the judge found that the Appellant's Chinese had deteriorated to any appreciable degree. Even if it had, it was argued that it was irrational to find that this could amount to a very significant obstacle given the Appellant's clear academic aptitude and consequent ability to regain fluency.

11. The judge placed reliance on a report from a psychologist in relation to the Appellant's vulnerability to depression. It was argued that the judge failed to explain why the readjustment required by the Appellant in requiring her to go back to Taiwan as an adult, with the assistance of ongoing counselling if required, amounted to a very significant obstacle to reintegration.

Error of Law Hearing

12. The appeal came before me. Ms Fijiwala for the Secretary of State relied on the Grounds of Appeal as summarised above. Ms Seehra for the Appellant provided me with the Appellant's Rule 24 response and argued that the challenge was unfounded considering the detailed reasons given by the judge. She expanded on this before me and referred in particular to the fact that the First-tier Tribunal Judge had identified a number of factors in relation to the Appellant including her vulnerability to relocating at a young age, that she had lived in the UK since 2003 when attending boarding school; that she was aged 14 on arrival and at the time of hearing was nearly 26 years old; that she had spent twelve years living lawfully in the UK; that she had battled with anorexia and depression whilst at school and this had led to trips to Taiwan; that her adolescence, some of her formative years and her entire adulthood had been spent in the UK; that she had lived with her sister in the UK since 2006; that she had been undertaking cognitive behavioural therapy since July 2003; and she had employment in the UK.

13. Ms Fijiwala relied on the Respondent's guidance in relation to the meaning of very significant obstacles. The extract before me was dated August 2015. This provides that:

> "When assessing whether there are 'very significant obstacles to integration into the country to which they would have to go if required to leave the UK', the starting point is to assume that the applicant will be able to integrate into their country of return, unless they can demonstrate why that is not the case. The onus is on the applicant to show that there are very significant obstacles to that integration, not on the decision maker to show that there are not."

The guidance further provides:

> "A very significant obstacle to integration means something which would prevent or seriously inhibit the applicant from integrating into the country of return. The decision maker is looking for more than

> obstacles. They are looking to see whether there are 'very significant' obstacles, which is a high threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant."

14. Ms Seehra reminded me that this extract was just guidance.

15. I have also considered that there is a very high threshold for an irrationality argument to succeed. I have reminded myself that a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible: **R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982** applied.

16. However, in this appeal I am satisfied that that threshold has been reached. Although it is clear that the judge took into consideration a number of factors including as summarised by Ms Seehra and set out above, I am satisfied that the decision of the First-tier Judge failed to take full cognisance of the Appellant's repeated return trips to Taiwan (again as set out above) which it was found defeated the long residence claim. These trips back, it has not been disputed, were to obtain emotional support from her parents, who still live in Taiwan.

17. Although Ms Seehra argued that this was very much in the context of the Appellant as a child, I am not satisfied that the judge has made adequate findings, or indeed any, as to why her parents would not be in a position to provide support, if required, on return. In addition the Appellant's return trips to Taiwan, together with the fact that she lived there until the age of 14, is also relevant to the Appellant's level of ability in the Chinese language. However, as noted above, the judge found that the Appellant was credible and that her Chinese was "no longer very good". I am not satisfied that Ms Seehra was able to demonstrate how such a finding was sustainable in the absence of any adequate reasons for reaching such a decision in the light of the evidence before the judge.

18. In the alternative I am further satisfied that even if such a finding were correct, that the Appellant's Chinese is "no longer very good", that it was irrational to conclude that this was a very significant obstacle without providing adequate reasons as to why the Appellant's clear academic aptitude would not assist her in regaining the requisite level of fluency and in integrating generally.

19. I am satisfied therefore that the making of the decision of the First-tier Tribunal did involve the making of an error of a point of law, capable of affecting the outcome of the appeal and is set aside to the extent set out below. I gave my decision at the hearing.

20. I am satisfied that this error did not infect the judge's findings in relation to paragraph 276B in relation to long residence and I am satisfied that these findings, at paragraphs 25 to 27 of the judge's decision, can stand.

21. However, given in particular the question in relation to the Appellant's command and level of Chinese, it is not appropriate to preserve Judge Veloso's findings of credibility. None of Judge Veloso's findings in relation to paragraph 276ADE are to stand.

Remaking the Decision

22. I had initially been disposed to remake the decision on the day and to hear further evidence, Ms Seehra having provided a bundle of documents in the event that the Tribunal wished to remake the decision. However Ms Seehra indicated that not all of the witnesses were in fact available, due to a variety of factors. I considered the Tribunal Procedure (Upper Tribunal) Rules 2008 including the overriding objective at Rule 2 which is to enable the Upper Tribunal to deal with cases fairly and justly.

23. Although the missing witnesses' evidence may be more peripheral to the Appellant's case than that of the witnesses who were present, nevertheless I accepted Ms Seehra's submission that given the failure of Judge Veloso to make findings in relation to Article 8 outside of the Rules that issue will still be before the Upper Tribunal in remaking the decision.

24. Given that Judge Veloso did not make findings of fact in relation to the oral evidence that was given before Judge Veloso in relation to the witnesses who were not present before me, I was of the view that it was fair and just to both parties to adjourn the hearing. Ms Fijiwala did not object to such a course.

Notice of Decision on Error of Law

The First-tier Tribunal's determination contains an error of law capable of affecting the outcome of the appeal and is set aside (other than as set out at paragraph 20 above)

The decision on the appeal will be remade by the Upper Tribunal.

DIRECTIONS

A. The appeal is relisted on 10th February 2016 (am), before a single Judge of the First-tier Tribunal.

B. The Appellant's representative is to ensure that witness statements, updated if necessary, are filed and served for all of the seven proposed witnesses.

C. The Appellant's representative is directed to file and serve a consolidated, tabulated bundle of any evidence, including such witness

statements, which the Appellant wishes to rely on in respect of her appeal under paragraph 276ADE(1) and under Article 8 outside of the Rules, no later than 27th January 2016.

D. The Appellant's representative is to file and serve a skeleton argument.

E. The Secretary of State is to file and serve, by no later than 3 February 2016, any evidence relied upon that is not contained within the bundle she relied upon before the First-tier Tribunal

F. The case is to be listed for three hours.

Any failure to comply with these directions may lead the Tribunal to exercise its powers to decide the appeal without a further oral hearing, or to conclude that the defaulting party has no relevant information, evidence or submissions to provide.

No anonymity direction is made

Signed Date: 12 January 2016

Deputy Judge of the Upper Tribunal Hutchinson