



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/04461/2013**

THE IMMIGRATION ACTS

**Heard at Manchester
On August 21, 2014**

**Determination
Promulgated
On August 22, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MASTER XIMIN GUO
(NO ANONYMITY DIRECTION)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Khan, Counsel, instructed by Haq
Hamilton Solicitors

For the Respondent: Mr McVeety (Home Office Presenting
Officer)

DETERMINATION AND REASONS

1. The appellant, born January 6, 1996, is a citizen of China. On November 5, 2012 he applied for entry clearance for the purposes of settlement as a child of a person settled in the United Kingdom.

2. The respondent refused his application on January 11, 2013 on the basis he/she was not satisfied:
 - a. The appellant was related as claimed.
 - b. The father (sponsor) had sole responsibility for his upbringing and there were serious and compelling family or other considerations which made his exclusion undesirable.
 - c. There was adequate accommodation.
3. On January 28, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. The respondent reviewed the application in light of further evidence on August 28, 2013 but maintained the refusal.
4. The matter was listed before Judge of the First-tier Tribunal Carroll (hereinafter referred to as "the FtTJ") on February 25, 2014 and in a determination promulgated on March 5, 2014 he dismissed the appeal on the sole ground he was not satisfied there was adequate accommodation. He accepted the appellant was related as claimed and as both parents were now living in the United Kingdom there was no longer any issue about the appellant's father having to have sole responsibility or any need to find serious and compelling family or other considerations which made his exclusion undesirable.
5. The appellant appealed that decision on May 14, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal McDade on May 22, 2014 as he found it was arguable the FtTJ had erred in his assessment of the evidence relating to the accommodation.
6. Having read the papers prior to the hearing I raised with Mr McVeety whether he was objecting to the application because the FtTJ had made significant findings at paragraph [10] of his determination:
 - a. He accepted the sponsor and his wife's evidence that only they and their young son lived in the property.
 - b. He accepted their evidence about how many bedrooms were in the property.
 - c. He had a report, albeit undated, that confirmed their evidence about the size of the property.

7. Mr McVeety accepted there was an error in law and that there were no reasons to refuse this application in light of the FtTJ's findings of facts.
8. In these circumstances I did not require Mr Khan to address me.

ERROR OF LAW ASSESSMENT

9. There was an error in law because the FtTJ had a report that confirmed a physical examination of the property but more importantly he also found the sponsor and his wife to be credible and consistent witnesses both with regard to the size of the property and the number of occupants.
10. In those circumstances the property was not overcrowded and the appellant satisfied the Immigration Rules.

DECISION

11. There is a material error of law. I set aside the original decision and I allow the appellant's appeal under the Immigration Rules.
12. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not make a fee award because this appeal succeeded following the submission of further evidence and the oral evidence of the sponsor and his wife.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis