



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

Appeal Number: OA/16818/2013  
OA/16820/2013

**THE IMMIGRATION ACTS**

**Heard at Sheldon Court, Birmingham**

**Determination**

**On 23 September 2014**

**Promulgated**

**On 30 September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**ENTRY CLEARANCE OFFICER  
CHINA (BEIJING)**

**And**

**MISS WENXIN CHEN (A1)  
MASTER WENJIE CHEN (A2)  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr M Mills, Senior Presenting Officer  
For the Respondent: Mr C Lane, Counsel, instructed by Lin & Co,  
Solicitors

**DETERMINATION AND REASONS**

**Claim History**

1. The Appellant in this appeal was the Respondent at the First-tier Tribunal hearing on 21 May 2014. However, for ease of reference, the Appellant and Respondents are hereinafter referred to as they were before the First-tier Tribunal. Therefore Miss Chen and Master Chen are referred to as the Appellants and the Secretary of State is referred to as the Respondent.
2. The Appellants, whose stated dates of birth are 20 September 1997 and 25 June 1996 respectively, applied under paragraph 297 of HC 395, as

amended (the Immigration Rules) for leave to enter the United Kingdom as the children of the Sponsor, Ms Xue Mei Sum. Their applications were refused and their appeals against refusal were allowed by First-tier Tribunal Judge Graham in her determination dated 13 June 2014. The issues before her were sole responsibility and maintenance.

3. The Respondent, in the grounds of application, takes issue with the Judge's findings in relation to sole responsibility only. Prior to refusing the entry clearance applications, a field visit was made and the results of the field visit were contained in a Field Visit Report (FVR) referred to by the Judge as the document verification report (DVR). The Respondent submits that in determining the issue of sole responsibility, the Judge found that the field officers were unable to locate the Appellants, their maternal grandparents or the property in which they were said to reside with their grandparents because the field officers were asking about the "Chen" family when they were residing with their maternal grandparents who were Sun Zhong Ping and his wife Xue Yun [18]. In so finding, the Respondent submits that the Judge did not have regard to the entire contents of the FVR, which included the fact that precise details of the maternal grandparents were confirmed with the Appellant (A2), enquiries were made of the villagers and the village community officer and the Appellants' grandfather was telephoned. It is submitted that because the totality of the evidence provided by the FVR was not considered by the Judge, her findings on the issue of sole responsibility were materially flawed.
4. Permission to appeal was granted on the basis that it was arguable that "... In finding that the Field Officers had made enquiries about the "wrong family", the Tribunal left out of account other aspects of the evidence that suggested that the appellants were not living where they claimed and that it thus reached a perverse decision on the facts."
5. A Rule 24 reply was filed by on behalf of the Appellants, in which it is submitted that there was nothing to indicate that the Judge had not considered the entire contents of the FVR; there was nothing within the report which identified the villagers or the community officer who was said to have been consulted. Against this background, it is submitted that (i) a visit in the middle of the afternoon which failed to find the Appellants (who were at school) or the maternal grandparents was not decisive of the application as a whole when there was other evidence which was not challenged (such as a land deed in the name of the maternal grandfather and school letters confirming the Appellants' home address) (ii) even if the Judge should have given more complete reasons for her conclusions, which is not accepted, this error would not be material. In the alternative, it is submitted that if there is a fresh assessment of the DVR, the unchallenged findings in relation to the other evidence, including the credibility of the Sponsor, establish that the appeal must be allowed.

### **The Hearing**

6. At the hearing, Mr Mills submitted that the mother of the Appellants was in the UK and the father was in China, they were divorced and the question was whether responsibility was shared. There was evidence of divorce,

government registration documents had been checked and the Appellants were registered as living with the paternal grandparents. The field officers had gone to some lengths to ascertain where the Appellants were living and their efforts were set out in the FVR. In the original grounds of appeal before the First-tier Tribunal, there was some dispute as to the content of the telephone calls made; there was reference to people being obstructive and an assertion that if the field officers came out in the middle of the day without warning it was likely that people would be out. The Judge placed considerable weight on the field officers asking about the “Chen” family but did not consider the rest of the FVR.

7. Mr Mills submitted that in the FVR it is stated that villagers were asked about the “Chen” family and no one had heard of them. However, the Appellants’ surname was Chen, they were teenagers and claimed to have lived with their maternal grandparents for some time yet neighbours did not appear to know them. She also ignored the other matters set out in the FVR and her decision ought to be set aside.
8. When asked if the Notices of Refusal of the applications were sent to the Appellants by post, Mr Mills stated that he did not know but at some overseas posts, decisions were collected by the applicants. Mr Lane also did not know but pointed out that p 289 of RB confirmed that the decision had been sent ‘Via Visa Application Centre’ but it was not signed by the applicants to establish that it had been handed to them.
9. Mr Lane submitted that the only issue was whether the Judge did or did not consider material evidence. She was aware of the entire contents of the report [3(ii)] and considered all of it [6 – 8]. She found that asking about the wrong family would cause confusion amongst the local community and the community officer [18]. The community officer in fact knew the family because he took them to the brother of the maternal grandfather (RB, p 307). It was possible that someone who had turned up at the village and made enquiries would be viewed with suspicion; there was nothing to indicate that they would be co-operative or that they were not deliberately misleading. The Appellant was contacted and he was co-operative; no part of what he had said during the telephone conversation could be said to be misleading.
10. Mr Lane also submitted that the grounds of application seemed to recognise the difficulties; it was stated within the grounds that the FVR identified that the “grandmother’s sister in law purportedly called the appellant’s grandmother who said that she was on her way to the apartment”. If no family member of the maternal grandparents lived in the village, the villagers and the community officer could simply have denied that they did.
11. Mr Lane further submitted that this was not the only evidence that the Judge relied on in reaching her decision; she had the land deed confirming that the Appellants’ maternal grandfather owned the property, the address therefore existed, the letters from the children’s school gave their home address and she found the Sponsor was entirely credible. The Judge did all that she needed to do and did not err in law in reaching her decision.

12. Mr Mills, in reply, submitted that it could not be said that other findings within the determination were not challenged; the Judge did not deal with the FVR properly and this error infected her other findings. He stated that if I were to find that the Judge materially erred, all findings would have to be remade.

### **Decision and reasons**

13. It is trite law that the Judge must make her decision on the evidence in the round. Within the Entry Clearance Manager's review, he notes that a copy property certificate was submitted with the appeal. This property certificate confirms that the maternal grandfather owns the property in which the Appellants were said to reside. Nowhere within the review does the ECM state that the property certificate does not reliably establish that the property did exist and nowhere in the determination is it recorded that the presenting officer submitted, at the hearing, that the address did not exist. The failure to locate a property, as asserted in the Notices of Refusal, is not the same as saying the property did not exist. The 'Translation of Household Registration' (RB, p 126) establishes the address of Sun Zhong Ping so it cannot be said (i) that it does not exist and (ii) that Sun Zhong Ping does not live there. This evidence was before the Judge when she made her findings of fact.

14. It is clear that she was aware of the contents of the FVR [3(ii)] and [6 - 8] and the submissions within the grounds of appeal before her; she was aware of the concerns as to whether the villagers may have been deliberately obstructive. Bearing in mind the 'Translation of Household Registration', which confirms the maternal grandfather's address, it cannot be said that the property he owns does not exist. Due to initial enquiries regarding the "Chen" family, it was open to the Judge to find that there was some confusion in the way in which the field officers had attempted to locate the Appellants. There is no indication within the report as to whether the villagers they spoke to would provide reliable information. On the evidence before her, the Judge was entitled to conclude that the field officer's report was unreliable and in the absence of the FVR providing any reliable information, the Judge referred to other parts of the evidence before her to establish if the address existed and if the Appellants lived there [18] and she found that she had sufficient evidence to confirm that it did and they did.

15. The Judge then considered whether the Sponsor had sole responsibility and she found that she did on the basis of remittances, evidence of visits and contact. This finding was open to her on the evidence before her and no errors of law are disclosed.

### **Decision**

16. The determination of Judge Graham contains no material errors of law and her decision therefore must stand.

17. The Respondent's appeal is dismissed.

18. There was no application for an anonymity order before the First-tier Tribunal or before us. In the circumstances of this case, we see no reason to direct anonymity.

Signed

Date

M Robertson  
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

In light of my decision, I have considered whether to make a fee award (Rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4) (a) of the Tribunals Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the appeal has been dismissed, Judge Graham's fee award is confirmed.

Signed

Dated

M Robertson  
Deputy Judge of the Upper Tribunal