



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

Appeal Number: OA/23892/2012

THE IMMIGRATION ACTS

**Heard at Glasgow
on 6 March 2014**

**Determination
Promulgated
On 4th April 2014**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

ENTRY CLEARANCE OFFICER, GUANGZHOU

Appellant

and

**JINHUI WENG
JINGMING WENG**

Respondents

For the Appellant: Ms Gough, Senior Home Office Presenting Officer
For the Respondents: Mr Caskie, Advocate, instructed by Pryde Immigration Lawyers

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) We refer to parties as they were in the First-tier Tribunal. The appellants are brother and sister, citizens of China. Judge Scobbie allowed their appeals against refusal of leave to enter the UK as the children of a parent present and settled in the UK.
- 2) The Entry Clearance Officer's first ground of appeal is that the judge erred by failing to grant an adjournment for evidence to be brought to discredit the sponsor's allegedly false evidence that he had permission to work in the UK. The second ground is inadequate reasoning about the sponsor's sole

responsibility for the appellants. The first complaint is an element in the second. Woven into the grounds is a further complaint, that the judge failed to take account of the involvement of the appellant's mother in illegal migration, and that it would be an abuse of the Rules for the appellants to benefit from such wrongdoing. That third point was not separately developed in the grounds or in submissions, and we see nothing in it to disclose error in law. The essential complaint by the ECO is about refusal of adjournment.

- 3) The Presenting Officer in the FtT firstly asked for an adjournment because the case had been on a "float list" and he had inadequate time to prepare. He was given an hour and a half, including the lunch break. At a later stage, he sought the adjournment to obtain further evidence. The determination conflates these aspects at paragraphs 4-7 under the heading "procedural matters", but they should have been dealt with distinctly.
- 4) A Presenting Officer should sometimes be given time to prepare a case which he or she is asked to take on at short notice. Depending on the time available and the nature of the case, that might extend as far as adjournment to another date. That is not now an issue in this case.
- 5) There are also cases where fairness requires that a party be given time to deal with a matter emerging in course of a hearing. In this instance, that might have involved obtaining the sponsor's immigration history and file of papers. Mr Caskie submitted that this is a matter the Presenting Officer should have been ready to deal with, because it should have been anticipated when preparing cross-examination. We would not have upheld that submission. However, the hearing in the FtT was on 25 October 2013. On 6 March 2014 the Presenting Officer was not equipped with the information to refute the sponsor's evidence, if we had offered that opportunity.
- 6) Lord Reid, giving the opinion of the Court, said in *HA & TD v SSHD* [2010] CSIH 28 at paragraph 15:

... It is necessary to bear in mind that a procedural impropriety will not vitiate a decision if it is apparent that no prejudice was suffered: *Ahmed v SSHD* [1994] Imm AR 457 (following *Malloch v Aberdeen Corporation* 1971 SC (HL) 85 at pages 104 and 118).
- 7) We might have been inclined to hold that there was a procedural impropriety in this case; but in absence of any proposed evidence to improve the respondent's case, that is beside the point. The determination of the First-tier Tribunal shall stand.



3 April 2014

Judge of the Upper Tribunal