



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/03762/2014

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 19 December 2014

Determination Promulgated  
On 6 January 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Honggunang Li  
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant: Mr S Vokes, instructed by Ian Henery Solicitors Ltd  
For the respondent: Mr N Smart, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Honggunang Li, date of birth 10.4.70, is a citizen of China.
2. This is his appeal against the determination of First-tier Tribunal Judge Devlin promulgated 21.5.14, dismissing his appeal against the decision of the respondent, dated 31.5.14, to refuse his application for indefinite leave to remain in the UK as a work permit holder, pursuant to paragraph 134 of the Immigration Rules. The Judge heard the appeal on 6.5.14.

3. First-tier Tribunal Judge Simpson granted permission to appeal on 28.7.14.
4. Thus the matter came before me on 19.12.14 as an appeal in the Upper Tribunal.

### **Error of Law**

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Devlin should be set aside.
6. In essence, the grounds of application for permission to appeal assert that the judge made adverse findings concerning the appellant's evidence with reference to spelling mistakes, including more particularly with reference to claimed places of work and residence. However, the decision itself contained similar errors of spelling and had missing and incomplete sentences and other mistakes. Even the work permit evidence contained spelling errors, as did the HMRC and Home Office documents.
7. It is also submitted that the judge's findings concerning the appellant's working were contradictory by finding that evidence of employment had not been made out whilst finding that the Secretary of State's reliance on a HMRC research response could not be relied upon because it was not shown to have been made against the appellant's claimed employer.
8. Further, the judge unfairly relied on a new issue not previously raised, the Life in the UK test certificate.
9. Finally, it is submitted that as the article 8 findings were based on findings which had been made in error they could not stand.
10. In granting permission to appeal, Judge Simpson found that though the decision is reasoned at some length," the judge's analysis of the facts arguably amounted to an error or errors of law inter alia unsustainable adverse findings concerning errors & omissions in the appellant's evidence and the raising of a matter not before in issue. Arguable error(s) of law disclosed in the grounds."
11. The Rule 24 response, dated 7.8.14, submits that grammatical errors and factual errors in the decision, particularly those at §19 and §21, are not material to the outcome of the appeal. Ultimately the judge was not satisfied with the explanation for the discrepancies and was not satisfied that the appellant ever worked for the New World Restaurant, let alone for a continuous period of 5 years.
12. For the reasons set out herein, I agree with the submissions of the appellant and find that there were such errors of fact in the decision of the First-tier Tribunal that the conclusions reached are not sustainable and that the article 8 assessment in reliance on a flawed factual basis cannot stand. Mr Smart accepted in his submissions that there are significant difficulties with the determination and did not resist Mr Vokes contention that it contained such material errors of law that it should be set aside and remade.

13. The judge raised serious concerns with the appellant's evidence and explanations for discrepancies which were not satisfactorily explained. However, the extent of the factual errors by the First-tier Tribunal Judge is such that it is impossible to regard the decision as a fair assessment of the appellant's case. The outcome of the appeal may not prove to be any different, but in the light of the errors fairness demands that the appeal be heard afresh with no findings preserved.
14. Although very lengthy the decision of the First-tier Tribunal is poorly drafted and contains numerous errors of grammar, spelling and mistakes of fact that render it very difficult to understand. For example, the sentences at §19 and §21 are incomplete. It appears that the judge intended to refer to case law, but omitted to include the name or citation.
15. However, it is not just a problem of comprehension, the judge relies on some of these same issues as undermining of the appellant's credibility, describing them at various points as "truly discrepant," and dismissing the appellant's explanation for discrepancies in spelling.
16. For example at §33 there is reference to a letter from Mr Gheng, dated 8.7.10. At §41 this person is named as Mr Chang and his letter is now dated 9.7.10. At §59 the date of the same letter is now given as 8.7.13. At §60 the author is now referred to as Mr Cheng. The decision also contains several different spellings of Chislehurst Road, Broadacre Close, and the town of Bagillt, Clywd. The judge repeatedly misspelt the town name as Balgitt and yet the judge did not find it credible that Mr Chang/Gheng/Cheng would have mistyped the address of his restaurant on Chislehurst Road, Orpington, Kent, or failed to notice that it had been misspelt. The judge made similar errors throughout the determination. At §17(iii) it appears that the same misspelling of Chislehurst Road as Christlehurst Road appears in the appellant's work permit. From §97 it appears that it was spelt the same way in the HMRC database. It is difficult to sustain a determination criticising, inter alia, the fact that a witness of Chinese made a mistake in the correct spelling of a street name, when the judge also misspells place and street names, and the incorrect spelling is used on a work permit and HMRC documentation. Neither is it clear from §42 what the judge means by "truly discrepant;" it may be as little as the slight difference between Chiselhurst and Chislehurst.
17. I accept Mr Vokes' submission that these errors necessarily infect the article 8 assessment. At §65(i) the judge specifically stated that reason had been found to doubt the reliability of the letters from Mr "Chang" and Mr Lee.
18. In the circumstances, the decision is unsustainable and must be set aside and remade.
19. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the facts are unclear

on a crucial issue at the heart of an appeal, as they are in this case, effectively there has not been a valid determination of those issues. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

20. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

### **Conclusion & Decision:**

21. For the reasons set out herein, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the decision to be remade afresh in the First-tier Tribunal.



Signed:

Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup

### **Consequential Directions**

22. The appeal is remitted to be relisted in the First-tier Tribunal, Birmingham, at the earliest convenient date;
23. The appeal is to be heard afresh, with no preserved findings of fact;
24. The time estimate is 1.5 hours;
25. If an interpreter was required at the First-tier Tribunal hearing, an interpreter in the same language should be booked for the de novo hearing.

## **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

## **Fee Award**

**Note: this is not part of the determination.**

In the 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).

I make no fee award.

Reasons: The outcome of the appeal remains to be decided.



Signed:

Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup