



IAC-FH-AR-V1

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

Appeal Number: IA/31704/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 October 2015**

**Decision & Reasons Promulgated
On 13 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**YING CHEN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss A Everett, Home Office Presenting Officer

For the Respondent: Mr D Mold, Counsel, instructed by An Easy Visa Ltd

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department in the case of a decision of First-tier Tribunal Judge Lal which was promulgated on 18 May 2015. It relates to a decision taken by the Secretary of State on 30 July 2014 refusing to vary Ying Chen's leave to remain in the United Kingdom.
2. The First-tier Tribunal's decision is unusual: first, because of its brevity and second, because of the paucity of legal reasoning and explanation. It would appear that some preliminary point was taken by Mr Mold, counsel

for Ms Chen, indicating that in his view the matter should be remitted on the basis “that it was not in accordance with the law as the appellant has been faced with a number of issues that had been raised for the first time in the Reasons for Refusal Letter.”

3. That preliminary submission was opposed on behalf of the Home Secretary and it was contended that the matter should be considered as the First-tier Tribunal would ordinarily do although accepting that the Tribunal was precluded from considering evidential material that had not been before the respondent at the material time.

4. The Tribunal's decision is found in one short paragraph, namely paragraph 8, which reads as follows:

“The Tribunal considered the evidence before it with some care. On balance it is prepared to accept that the approach advocated by Mr Mold, namely for the Tribunal to remit the matter on the basis that it is not in accordance with the law as the appellant has been faced with matters that have been raised for the first time in the refusal letter. The Tribunal notes the evidence that the appellant now raises a response to the refusal letter and the Tribunal notes that the appellant has always been in the UK with lawful leave. Now she knows what the issues are it will allow the respondent to properly consider the evidence that the appellant has produced and which is material to the issue in the appeal.” (emphasis added)

5. Ms Everett who acts for the Home Secretary indicates that it is difficult to find, still less follow, the reasoning of the First-tier Tribunal Judge in taking the decision to remit the matter as he did. There is a bold assertion that the Secretary of State's decision was “not in accordance with the law” and it is also said that the appellant has been faced with matters “that have been raised for the first time in the refusal letter”.

6. However, the First-tier Tribunal Judge does not indicate what those matters may have been. He does not state why they preclude the First-tier Tribunal from making a proper evaluation of the matter and from determining the appeal and they do not specify why the decision of the Secretary of State was not in accordance with the law. I confess to some sympathy for Ms Everett in that I find it next to impossible to discern the reasoning of the First-tier Tribunal Judge as to why he did not feel able to determine the matter which was before him.

7. Mr Mold today makes the sensible concession that the determination is not as full as it ought to be and that there should have been a couple of additional paragraphs in order to make clear the judge's reasoning. He seeks to argue for the upholding of the decision by making reference, among other things, to the case of **Naved v Secretary of State for the Home Department [2012] UKUT 14 (IAC)**. I am not sure how much he is assisted by this case which merely recites the basic principle that a First-tier Tribunal cannot consider evidence which was not before the original decision maker when the refusal letter was sent. The case of

Naved is a full and detailed decision, not the perfunctory paragraph which we have here.

8. In all the circumstances there is a clear material error of law in this inadequate determination and I have no hesitation in setting it aside.
9. Having set it aside, what then do I do? Although counsel for the Home Secretary initially pressed me to dismiss the underlying appeal, I do not consider that would be appropriate. There is yet to be a proper and lawful consideration of the matter by the First-tier Tribunal. The fallback position of Ms Everett is that the matter should be remitted to another First-tier Tribunal for a fresh determination. Mr Mold agrees that if I were against him and set aside this decision (as I have), the proper course is to remit for a fresh determination. I respectfully agree. This matter needs to be looked at properly by a Judge of the First-tier Tribunal and I remit it accordingly.

Directions

Appeal allowed.

Remit the matter to First-tier Tribunal for fresh determination (not before Judge Judge Lal). Time estimate one hour.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed *Mark Hill QC*

Date 13 October 2015

Deputy Upper Tribunal Judge Hill QC