IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: VA/06563/2014
VA/06564/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 February 2016	**On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS PINZHU CHEN
MR ZHENGEN LIN
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Ms N Willocks-Briscoe, Home Office Presenting Officer
For the Respondents: Mr C Lam, Counsel instructed by AP Solicitors

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State in relation to a decision of First-tier Tribunal Judge Gillespie which was promulgated on 8 September 2015. The matters with which the court is concerned relate to an application for a visit visa. The applicants have a son who lives in the United Kingdom together with his spouse and there are two children of that relationship. The applicants sought and were refused a visa in order to visit from China. That decision was overturned by the First-tier Tribunal

Judge and it is the reasoning and conclusion of this decision that the Secretary of State invites me to revisit today.

2. It is, I confess, a rather unsatisfactory decision. First of all, in paragraph 2 the judge properly makes reference to the leading authority of **Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)** which demonstrate the principles which are to apply in cases such as these. There is no freestanding right of the First-tier Tribunal to investigate the merits of the decision of the visa officer. Instead the best that the First-tier Tribunal can do is to consider whether there has been a violation of Article 8. That requires a thorough and detailed examination of the family right which is engaged and in addition to that a nuanced proportionality test taking account of the very substantial public interest which exists in upholding the effectiveness of immigration control.

3. In this instance, the judge reminded himself in paragraph 9 of his decision, "I must also guard against the circumstance that an appeal such as this simply becomes a disguised appeal against the merit of the decision." Looking at the decision both in the round and with reference to the specifics, I fear that the First-tier Tribunal Judge fell into precisely the trap which he had expressly warned himself against. In this instance, although he made certain reference to the grandparents having some involvement with their grandchildren including financial responsibility for a period of some ten years, and in paragraph 6 to the fact that there may have been continuous communication by internet, social media and video messaging, it seems to me that the Article 8 consideration was at its best flimsy and at its worst non-existent. It is certainly not compelling. There is established principle that family life rights cannot be pursued in relation to parents and adult children and where consideration of minor grandchildren is concerned, there needs to be proper evidence of an enduring right which is in existence. I do not consider that this is made out in this instance.

4. In seeking to uphold the decision of the First-tier Tribunal Judge, the appellant's representative sought to indicate that the proportionality test had been properly applied. He made reference to certain parts of paragraph 9, paragraph 10 and of paragraph 11. On a full reading of those paragraphs there is nothing to suggest that the First-tier Tribunal Judge properly exercised the proportionality test, weighing on one hand the nature and significance of the alleged interference with Article 8 right and on the other hand the substantial public interest involved in the enforcement of immigration control. That being the case, the judge's decision was clearly flawed and cannot be upheld.

5. The judge effectively reviewed the matter in the light of the Immigration Rules and then sought to dress that up as a determination under the principles of Article 8. That error of law having been demonstrated, this appeal must be allowed. As there is no arguable appeal under the Immigration Rules, the decision of the visa officer must be restored.

Notice of Decision

The appeal is allowed. Decision of visa officer restored.

No anonymity direction is made.

Signed *Mark Hill QC* Date 20 February 2016

Deputy Upper Tribunal Judge Hill QC