Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/08387/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 April 2018	**On 5 June 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR JIA LING LI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr E Nicholson, counsel, instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent:	Mr N Bramble, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of the PRC, date of birth 15 May 1963, appealed against the Respondent's decision to make removal directions on or about 3 October 2014. That decision was supported by a Reasons for Refusal Letter dated 30 September 2014. His appeal against that adverse decision came before Designated Judge of the First-tier Tribunal Shaerf on 7 February 2018 and the appeal was dismissed on all grounds. Permission to appeal was given in March 2018.

2. Mr Nicholson with exemplary thoroughness has taken me through each of the grounds which he settled. He did not appear below, at which the Appellant was attended by a Miss J Smeaton of counsel. I have had a copy of the skeleton argument used by Miss Smeaton which was before the Judge dated 10 December 2017.

3. So far as ground 1 is concerned, the fact is that the Appellant was not interviewed by the Secretary of State and Mr Nicholson has relied upon the then paragraph 339NA of the Immigration Rules (the Rules) for the proposition that the Secretary of State has erred in law and that error infects all other aspects of the decision and appeal process because the Appellant was not given the opportunity of a personal interview on his application for asylum.

4. The fact is that the Rules provide for various options, which Mr Nicholson rejects as being applicable but in particular "(i) an interview may be omitted where the Secretary of State is able to take a positive decision on the basis of evidence available" and as the Rule continues at its conclusion "the omission of a personal interview shall not prevent the Secretary of State from taking a decision on the application". Then it continues further: "Where the personal interview is omitted, the applicant and dependants shall be given a reasonable opportunity to submit further information." So far as that is concerned, ignoring when such provisions were deleted, the fact there was not an issue raised that in some way or another further information would have been forthcoming in order to support a different outcome. It seemed to me that this argument raised by Mr Nicholson failed because quite simply the Secretary of State went on to make a decision and the judge proceeded to consider that matter with the Appellant having the fullest opportunity to present in advance and through the appeal hearing process any relevant factors.

5. Secondly, it is said that the Judge failed to address paragraph 276ADE(1)(vi) of the Rules. Mr Bramble submits that in fact on a fair reading of the decision as a whole the Judge did take into account the various factors being raised about: The length of the time the Appellant had been in the United Kingdom and did take into account the issues of return; and, what the Appellant might face not least with reference to the

claimed loss of contact with his family in China, that is his wife and children, the loss of his home and the various circumstances in which he came, as the Judge accepted, to leave the PRC illegally. Be that as it may, ultimately it is common ground that the Judge did not express a view in terms of a direct analysis of 'very significant obstacles' but he did so in the context that the Appellant having entered the United Kingdom illegally, lived and worked here for a considerable length of time, had worked in Chinese restaurants' kitchens, had associated, it would seem, since an interpreter was being used at the hearing of the appeal, with Chinese persons or those of that origin. There was nothing to suggest that culturally he had lost contact with his roots linguistically or indeed socially. To that extent there was a paucity of evidence being paraded by the Appellant as to why there were very significant obstacles to reintegration into China PRC, to which he would have to go if required to leave the United Kingdom.

6. I am ultimately considering whether or not there are sufficient and adequate reasons given by the Judge as to whether there is a material error of law and then whether or not such error as there may be materially affects or potentially materially affects the outcome of the appeal. It seemed to me that the strenuous arguments made by Mr Nicholson really did not get home on the point that there is materiality given the evidence that was actually presented. It did not seem to me that any other Tribunal properly addressing and expressing themselves in the appropriate terms would have realistically reached a different decision. I therefore do not find any aspect of ground 1 succeeds.

7. Ground 2 was a challenge to the Judge's findings on the Appellant's credibility. It seemed to me that the Judge scrupulously set out the material that was being advanced oral the arguments that were being put forward. The Judge addressed, as he was entitled to, what he saw as apparent inconsistency and the lack of evidence upon the issues. I concluded that the Judge was entitled to reach an adverse view on credibility. The point raised by Mr Nicholson in relation to the necessary assessment of credibility does not hold good and his essential challenge even with reference to the cases cited does not demonstrate that the Judge would not or could not have reasonably reached

the conclusion that he did. The case of MD (Turkey) [2017] EWCA Civ 1958 illustrates why I should be extremely cautious about interfering with adverse findings which the Judge reached; I do not do so, however attractively invited by Mr Nicholson to do so.

8. As to the Ground 3 the submission essentially made by Mr Nicholson was that the Judge has not properly addressed the significance of return to China bearing in mind the finding that the Judge made that the Appellant had left without a travel permit and to the possibility or the likelihood, as Mr Nicholson submitted, that he would face a significant fine, not least because of the length of time he had been out of the United Kingdom, and would face the realities of imprisonment I infer Article 3 ill-treatment or the risk thereof. So far as that ground is concerned it seemed to me that the Judge had recorded and understood the submissions that were being made about the issue of return. The Judge carefully noted the submissions made by Miss Smeaton about those issues and the Judge therefore turned [D41 and 42] to address the issue of return in those terms and did not find there was a real risk of persecution or proscribed ill-treatment or serious harm so as to engage the need for protection. Again, this is a point, which Mr Nicholson makes in an attractive fashion, I have to say that it does not seem to me that it has the strength to justify interfering with the Judge's decision. I therefore conclude that there were sufficient and adequate reasons given but if I was wrong in that view it seemed to me on the same material no different Tribunal would be likely to come to a different decision and therefore the error, if there was one, is not material.

9. Finally, Ground 4 raised the issue of the Judge's failing to consider the Article 8 ECHR issues either under the Rules or alternatively through the prism of the Rules and his assessment of proportionality was in error. It is true to say that the Judge's reasoning is brief but it is also correct that the evidence that was being advanced by the Appellant, notwithstanding the submissions that were being made to the Judge about it, was thin. Indeed concerning the claims about his private life in the United Kingdom and/or the effects of interference in that private life so as to reach an informed view upon their significance for the purposes of seeing whether Article 8(1) rights are actively engaged, accepting, as the Judge did, that the Appellant had exercised a

private life demonstrably in the United Kingdom through his presence and working here.

10. Mr Nicholson drew my attention correctly to the general expressions of view contained in the Administrative Court hearing by Deputy High Court Judge Grubb in 2014, in which, it seems to me, the Judge was addressing the issue of the proper assessment of Article 8 in the now well-understood position that the threshold of 'exceptionality', did not bear on this matter. I do not conclude that that case is of assistance because quite simply an assessment of Article 8 ECHR is fact-specific. It did not seem to me that the Judge omitted, nor is it said he did, any material factors or included matters that were immaterial or irrelevant. It did not seem to me that the challenge is really sustainable because the Judge did look at the issues. He may have expressed himself briefly but he was entitled to reach the view that the interference was not of the significance claimed but he also went on, in the context of the facts found, to conclude that the decision was not disproportionate.

11. The fact I might have written the decision or indeed other Judges might have written the decision differently or more fulsomely is perhaps the wisdom of after the event. The Judge did what he could do with the brief and limited evidence, he had, concerning those issues. Mr Nicholson for perfectly proper reasons has sought to give emphasis to those aspects but I have to say that ultimately it did not seem to me any different Tribunal would have reached a different decision on the evidence that was being advanced. For these reasons therefore I conclude that the appeal fails.

NOTICE OF DECISION

The appeal is dismissed.

Signed Date 27 April 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 27 April2018

Deputy Upper Tribunal Judge Davey