



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

Appeal Number: HU / 10670 / 2017

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2018**

**Decision Promulgated
On 12 November 2018**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Hoi Yan Lee
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr J Martin, of Counsel, instructed by Fletcher Day Solicitors.
For the respondent: Ms A Holmes, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of the Republic of China, born on 2 December 1979. She appeals, with permission, against the decision of Judge of the First-tier Tribunal Lever who, following a hearing on 8 March 2018, dismissed her appeal on human rights grounds against a decision of the respondent of 4 September 2017 which refused her application of 23 January 2017 for leave to remain in the United Kingdom under Appendix FM of the Immigration Rules on the basis of her family life with her partner, Mr Hyde Lin Tsang Wai, a national of China (the "sponsor").

2. In the appellant's case, the minimum income threshold ("MIT") was £18,600. The judge had concerns as to the credibility and reliability of documents produced by the appellant from her and her partner's employer, particularly in relation to the level of income for each of them. He did not find credible the evidence as to the nature and provenance of monies deposited into the savings accounts. In relation to EX.1 of Appendix FM, the judge did not find that there were insurmountable obstacles to family life being continued in Hong Kong.
3. At the hearing before me, Ms Holmes agreed that the judge had materially erred in law in his consideration of whether the documentary evidence satisfied the MIT. In particular, she accepted that he had overlooked relevant evidence. She therefore agreed that I should set aside the judge's decision and proceed to re-make the decision on the appellant's appeal against the respondent's decision. I agreed.
4. I therefore proceeded to re-make the decision on the appellant's appeal.
5. In this regard, Mr Martin and Ms Holmes agreed that:
 - i) the appellant and the sponsor had a combined income of £ 17,889.07;
 - ii) this meant that the shortfall in their income was about £ 800.00; and
 - iii) they would therefore need to show that they had savings in the minimum amount of £ 19,200, this being the aggregate of £ 16,000 and a sum (i.e. £ 3,200) which is equivalent to two and half times the shortfall of £ 800.00.
6. Ms Holmes agreed that the total amount of savings in the appellant's Santander accounts (there were two such accounts) was in excess of £ 24,000. Accordingly, Ms Holmes agreed that the appellant satisfied the MIT. She therefore asked me to allow the appeal.
7. Mr Martin and Ms Holmes agreed that the appeal should be allowed on human rights grounds.
8. For the reasons given above, I am satisfied that the appellant satisfies the MIT. I therefore allow the appeal on human rights grounds.

Decision

The decision of Judge of the First-tier Tribunal Lever involved the making of an error of law sufficient to require it to be set aside. The decision was set aside. The Upper Tribunal has re-made the decision on the appellant's appeal against the Secretary of State's decision. The appeal is allowed on human rights grounds.



Upper Tribunal Judge Gill

Date: 6 November 2018