



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11421/2016

THE IMMIGRATION ACTS

Heard at Liverpool  
On 17<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 3<sup>rd</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS X.Y.W.

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Hussain, Solicitor

For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of China born on 11<sup>th</sup> December 1987. The Appellant entered the UK on 31<sup>st</sup> August 2009 with leave to enter as a Tier 4 (General) Student Migrant valid until 26<sup>th</sup> October 2010. The Appellant was granted further leave to remain on two occasions extending her leave as a Tier 4 (General) Student Migrant until 12<sup>th</sup> April 2013. On 7<sup>th</sup> December 2015 the Appellant applied for leave to remain under family and private life grounds. That application was refused by the Secretary of State on 27<sup>th</sup> April 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Robson sitting at Manchester on 31<sup>st</sup> October 2017. In a decision and reasons promulgated on 23<sup>rd</sup> November 2017 the Appellant's appeal under the Immigration Rules was dismissed but the Appellant's appeal was allowed on human rights grounds.
3. On 29<sup>th</sup> November 2017 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. On 16<sup>th</sup> April 2018 Designated Judge of the First-tier Tribunal Woodcraft granted permission to appeal. Judge Woodcraft noted that the Respondent's grounds of onward appeal argued that the judge had not:-
  - (i) factored in the Appellant's history of deception in an English language test;
  - (ii) identified any compelling circumstances that justify allowing the appeal outside the Rules;
  - (iii) had given no reason why the Appellant could not apply for entry clearance from China.

He considered that it was arguable that the judge had not made clear why he had allowed the appeal given the large number of negative findings within the determination set against the brief reasons for allowing the appeal.

4. No Rule 24 response appears to have been filed and served by Ms W's solicitors. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State. For the purpose of continuity throughout the appeal process Ms W is referred to herein as the Appellant and the Secretary of State as the Respondent. I note that the First-tier Tribunal Judge granted Ms W anonymity. No application is made to vary that direction and it will remain in place. The Appellant appears by her instructed solicitor, Mr Hussain. The Secretary of State appears by her Home Office Presenting Officer, Mrs Aboni.

### **Submission/Discussion**

5. Mrs Aboni relies on the Grounds of Appeal submitting that the judge misdirected himself in allowing the appeal on human rights grounds despite finding that the Appellant had exercised deception in seeking to obtain leave using a falsely obtained ETS TOEIC certificate. Further, she submits that the judge had failed to identify compelling circumstances for allowing the appeal and whilst accepting the Home Office policy did not require a British child to leave the UK, the judge had made a number of adverse findings including the fact that the Appellant had two children in the UK neither of whom had any status here. Further, she submits that there was no evidence before the First-tier Tribunal to say that the Appellant's child B had regular contact with her father despite a contention that she did and that there was no evidence that he could not care for B in the absence of the Appellant.

6. Her main submission was that the judge had failed to give adequate reasons given the extensive deception and that the Secretary of State considered that it was proportionate to ask the Appellant to leave the UK.
7. In response, Mr Hussain advises that there is no material error and that the question to be addressed was whether or not the judge had adequately assessed the facts. He submits that he had and that the judge at paragraph 58 had given full and proper reasons regarding the purported deception and had made conclusions and findings that he was entitled to that the Appellant's credibility had not been affected. He submits that the judge had looked at the circumstances of the child and found that it was in the child's best interests for her mother to stay in the UK and had made a finding of a strong parental bond.
8. Mr Hussain points out that the judge had noted at paragraph 71 that the Appellant is the main carer of B and that he had asked questions quite properly thereafter at paragraphs 72 to 76 as to what the effect would be on B if the Appellant were to be asked to leave. He submits that the finding at paragraph 75 that it was in the child's best interests for the Appellant to remain in the UK was one that the judge was entitled to reach and that he has given adequate reasons and that there is no material error of law. In such circumstances he asked me to dismiss the appeal.
9. In brief response, Mrs Aboni contends that the best interests of the child are only one factor to consider and that the judge had failed to consider this against the public interest.

### **The Law**

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## Findings on Error of Law

12. The contention of the Secretary of State herein is that there is an inadequacy of reasons given for allowing the appeal. I remind myself that the issue extant before me is whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I am not re-trying the appeal and I acknowledge that it is always possible that another judge might on the facts have come to a different conclusion. The question is has the judge considered all the relevant factors and made a decision to which he was entitled and given reasons. I conclude that he has.
13. In such circumstances the submissions made by the Secretary of State amount to mere disagreement. The judge has acknowledged that there has been deception undertaken by the Appellant with regard to the taking of her English language test. He has concluded and given reasons at paragraph 58 that in view of the findings he makes at paragraphs 53 to 57 that the fraud did take place but that it does not affect the credibility of the Appellant. This was a finding that he was entitled to make and he has given reasons for it. Such a conclusion consequently does not disclose any material error of law.
14. Thereinafter he has gone on to consider the position of the two older children and gone on subsequently to consider the position of the Appellant's youngest child and her purported relationship with her natural father. The judge has balanced the factors of returning the Appellant to China in some detail, particularly at paragraphs 73 to 76, and made a finding at paragraph 77 that despite his adverse findings in respect of the Appellant he concluded that the removal of the Appellant would be disproportionate in relation to the consequences for child B. He has considered the public interest and he has carried out the balancing exercise. Whether another judge would have reached that conclusion is immaterial. There is nothing perverse in the judge's decision and it is fully reasoned. The First-tier Tribunal Judge heard the evidence. In such circumstances he has reached a decision which is reasoned and one that he was entitled to make. The decision consequently discloses no material error of law and the decision of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

## Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

## **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her

family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 27 July 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris