



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/21589/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 22 November 2018**

**Decision &  
Promulgated**

**On 20 December 2018**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR LEI JIANG**

(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Ms K Pal, Home Office Presenting Officer

For the Respondent: Mr P Richardson, Counsel

**DECISION AND REASONS**

1. This was initially the appeal of Mr Jiang against the decision of the Secretary of State of 3 September 2016 refusing his application for leave to remain under the ten-year route. There were two reasons for refusal in relation to that, one was that it was contended that he had submitted a false TOEIC certificate from ETS and also that he had not completed ten years' lawful residence in the United Kingdom by that time so it was refused on that basis. He appealed to a Judge of the First-tier Tribunal who allowed his appeal on human rights grounds. The judge found that the ETS allegation was not made out and also concluded at paragraph 14

that he satisfied the other requirements of the ten-year Rule and therefore the appeal succeeded.

2. The hearing before the judge was in January 2018 and I think it is common ground that the ten years was completed in August 2017. The Secretary of State appealed the decision on the basis first in relation to the TOEIC point where I found at the error of law hearing there was no error of law and secondly in relation to the failure to consider proportionality properly. The reason for finding an error of law, which may have seemed to the appellant to be a somewhat technical reason but it seemed to me a proper reason for finding an error of law was the equation of success under the Immigration Rules with success in a human rights appeal. As I said at paragraph 20 it is unlikely to be the case and not so in this particular case that all that needs to be said about human rights is success under the Immigration Rules.
3. We now have the decision of the Court of Appeal in TZ (Pakistan) which seems to take matters further on and I will read from that the quotation at paragraph 34 which Mr Richardson read out earlier:

“Where a person satisfies the Rules, whether or not by reference to an Article 8 informed requirement, then this will be positively determinative of that person’s Article 8 appeal provided their case engages Article 8(1) for the very reason that it would then be disproportionate for that person to be removed.”

4. So, that in a sense takes out the step that I thought was a necessary one at paragraph 20. The reasons for refusal as I say had both essentially been disposed of the TOEIC point, the ETS point and the ten years point and in light of what was said by the Court of Appeal in TZ (Pakistan) it seems clear to me, bearing in mind the further point that the appellant has been in the United Kingdom for eleven years and clearly has a private life and it seems that he may have had a family life also, that Article 8(1) is clearly engaged and as a consequence of his success in meeting the requirements of the Rules it must follow that the proportionality balance falls on his side and therefore the appeal falls to be allowed under Article 8.

No anonymity direction is made.



Signed  
Upper Tribunal Judge Allen

Date 7 December 2018