



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17003/2015

THE IMMIGRATION ACTS

Heard at Field House
On 10 May 2018

Determination Promulgated
On 15 May 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

JIAO [C]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 8 March 2018 against the dismissal of the Appellant's Article 8 ECHR appeal by First-tier Tribunal Judge Walker in a decision and reasons promulgated on 6 June 2017. The Appellant is a national of China. She relied on his relationship to her Indian partner and their children. Her previous appeal to the First-tier Tribunal had been dismissed on

21 January 2015. The Appellant has been in the United Kingdom with various forms of temporary leave since 29 April 2008.

2. Judge Walker found that the events subsequent to the First-tier Tribunal's decision on 21 January 2015, i.e., that the Appellant had had a second child born on 12 November 2015, her elder child had been granted a period of DLR in line with her father and a further 2½ years had passed, were insufficient to warrant a departure from that decision. Thus the appeal had to be dismissed. The judge recommended that the Secretary of State should review the family's situation.
3. Permission to appeal was granted on the basis that it was arguable that the judge should have considered whether Article 8 ECHR leave outside the Immigration Rules should have been considered and also the criteria set out in section 117 of the Nationality, Immigration and Asylum Act 2002, in that it was arguable that compelling circumstances existed.
4. At the tribunal's request, Mr Avery for the Home Office explained that the judge's recommendation had not been accepted or acted on. The Appellant's husband had recently been refused ILR. The grant of DLR to him earlier had been to cover the period of the Appellant's appeal.
5. The Appellant submitted a skeleton argument and addressed the tribunal. The substance of her submissions was a reargument of the issues in the appeal. The Appellant submitted that the judge had been mistaken to find that there had been no material change in circumstances. The family had become further integrated. The Home Office had been wrong not to accept the judge's recommendation. The appeal should be allowed.
6. Mr Avery submitted that the Appellant had shown no error of law in the First-tier Tribunal's latest decision. The appeal should be dismissed.
7. The tribunal stated that it found no error of law in the judge's decision and reasons. There was no error of fact. The judge had approached the appeal sympathetically and had gone as far as making a recommendation to the Home Office. That obviously carried no force and the Home Office were entitled not to accept it, as was the case.
8. The reality was, as the judge was entitled to find at [25] of his decision and reasons, that there had been no material change of

circumstances since the dismissal of the Appellant's appeal on 21 January 2015. The Appellant had simply refused to accept the decision and had made further representations which the Home Office had elected to consider. There were no compelling circumstances. The Immigration Rules were not met. The Appellant and her husband cannot dictate the place where their family life is to be lived as neither had settled status in the United Kingdom. Their preference is not available to them. DLR is a temporary status only and creates no commitment on the Respondent's part. The judge reached the only decision which was open to him on the facts.

9. Hence the tribunal finds that there was no error of law and the onwards appeal must be dismissed.

DECISION

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed

Dated 10 May 2018

Deputy Upper Tribunal Judge Manuell