



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04577/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 3rd September 2019

Decision & Reasons Promulgated
On 17th September 2019

Before

Upper Tribunal Judge Chalkley

Between

X H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Franczak, Counsel

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of the People's Republic of China born on 5th March 1982. He made application for leave to remain in the United Kingdom on 3rd September 2018 and that application was refused by the respondent on 22nd February 2019.
2. The appellant's immigration history is as follows. He claims to have arrived in the United Kingdom on 27th October 2014 and on that date claimed that he was at risk in China as a practising Christian. His application was refused on 3rd November 2004 and the appellant appealed. His appeal was dismissed in a determination

promulgated on 11th January 2005. He made further submissions unsuccessfully in April 2012 and May 2012. On 12th May 2012 the appellant had a child with [DC], a woman who at that time had indefinite leave to remain in the United Kingdom.

3. Further submissions were made, as a result of which the appellant was granted leave to remain outside the Immigration Rules on 4th March 2016 until 4th September 2018. It was on 3rd September 2018 that the appellant made his application which was the subject of the respondent's refusal on 22nd February 2019.
4. As a result of that refusal the appellant appealed to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Evans in Manchester on 10th May 2019.
5. Before me both representatives agreed that the First-tier Tribunal Judge had made an error of law and that his determination could not stand. He failed properly to consider Section 55 and the best rights of the appellant's child.
6. As a result, I set aside the determination save for the finding at paragraph 61 of the determination, which will stand. The appeal will be reheard by the First-tier Tribunal by a judge other than First-tier Tribunal Judge Evans given that the appellant has effectively been denied a fair hearing. A Mandarin interpreter is required, and two hours should be set aside for the hearing of the appeal.

Richard Chalkley

Upper Tribunal Judge Chalkley

Date 10 September 2019