



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: HU/16508/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC
On 8 March 2021

Decision & Reasons Promulgated
On 12 March 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

JIANGMEI ZHANG

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr W Chowdhary, solicitor, FMB Solicitors

For the Respondent: Mr M Diwnycz, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Chinese national with date of birth given as 27.11.53, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 18.2.20 (Judge Foudy), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 30.9.19, to refuse her application made on 20.3.19 for Leave to Remain in the UK on private and family life grounds.
2. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 11.5.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Lindsley granted permission, considering it arguable that
3. The Upper Tribunal has received the appellants further submissions, dated 1.9.20 and the respondent's Rule 24 reply, dated 27.8.20. At the hearing before me, both representatives were content to rely on their written submissions/responses and made no further oral submissions.
4. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
5. The relevant background is that the appellant entered the UK as a Family Visitor in 2010 but since then has illegally overstayed without ever having valid leave to remain. The appellant has no partner or dependent children in the UK. She has adult children in the UK, a son and a daughter, on whom she now claims to be dependent, and that she has a close relationship with her grandchildren in the UK. The evidence of her children was that they suspected she was suffering from dementia and, therefore, that she should remain in the UK to be cared for by them. It is important to point out that there was no medical evidence of any memory, mental health, or other medical problems. Judge Foudy found inconsistency in the oral evidence as to when the alleged memory problems were first identified and the reasons for wanting the appellant to remain in the UK. For example, at [17] of the decision, the judge recorded that the appellant's daughter stated that she needed her mother to remain in the UK because she could not afford to visit China to see her. Other inconsistencies were pointed out as to the appellant's circumstances in China and at [19] the judge pointed out that the appellant has been accessing NHS treatment to which she was not entitled.
6. Judge Foudy acknowledged at [19] of the decision that the adult children would like to care for their mother in the UK. It was pointed out that the appellant had not made an application as a dependent relative (which has to be made from outside the UK) and found that the evidence of dependency was "scant and unreliable", and not objective. In conclusion, at [20] of the decision, the judge was not satisfied that the appellant was dependent on her adult children in the UK, or

that she had no home to return to in China. The judge was not satisfied that the best interests of any child of the family required the appellant to remain in the UK.

7. It is understandable that the children would want their mother to remain in the UK. Obviously, the appellant has family life to a degree with her adult children and grandchildren. However, that does not mean that she is entitled to remain in the UK on article 8 ECHR family life grounds. Whilst the grounds submit that there was “overwhelming” evidence of dependency, the fact is that there was no medical or other independent evidence to support the claim of dementia or other mental health issues, or any consequent need for care and support to be provided in the UK by her adult children. The evidence was entirely subjective and found by the judge to be inconsistent and to lack credibility. Those were findings entirely open to the judge.
8. It is accepted that the appellant could not meet the requirements of the Rules for leave to remain and relied entirely on article 8 outside the Rules. In reality, the appellant was unable to demonstrate that her circumstances were such that there were, exceptionally, compelling so as to render her removal from the UK unjustifiably harsh and, therefore, disproportionate. The appellant clearly failed to discharge the burden of proof on her. Whilst the judge did not specifically address family life and follow the Razgar stepped approach to reach the proportionality balancing exercise, I am not satisfied that any different outcome could or would have ensued had the judge done so.
9. In consideration of the public interest, the Tribunal would have to take account of s117B of the 2002 Act and that little weight is to be given to private life developed in the UK whilst the appellant’s immigration status was both precarious and latterly unlawful. There was no evidence before the First-tier Tribunal sufficient to establish that the family life ties with children and grandchildren in the UK were more than those to be expected between adult relatives, or between a grandmother and grandchildren. Nothing in the evidence suggests that the appellant was unable to return to China and make an application from there for entry clearance as an adult dependent relative. The evidence adduced before the First-tier Tribunal does not begin to address the requirements of the Rules for an adult dependent relative.
10. As the grant of permission pointed out, whilst the grounds were considered at least arguable, “the appellant will need to explain why any errors of law are ultimately material to the outcome of the appeal.” Insofar as it is made, that explanation is inadequate. The conclusion I have reached is that any or all of the alleged errors in failing to conduct a more thorough article 8 assessment are not, in fact, material to the outcome of the appeal.

11. This was a pitifully weak claim for leave to remain on human rights grounds, unsupported by any independent evidence and undermined by contradictory and inconsistent subjective evidence. Even if the judge had conducted a balance-sheet assessment of the pros and cons, it is patently obvious that on the facts of this case the respondent's decision would inevitably be found entirely proportionate to the appellant's private and family life rights. The dismissal of the appeal was, frankly, inevitable.
12. In the premises, and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 8 March 2021