



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006578
On appeal from: HU/55624/2021
IA/14019/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 19th February 2024

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

YUNNIU WANG
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr David Clarke, a Senior Home Office Presenting Officer
For the Respondent: Mr Chuen Lam of Counsel, instructed by Raffles Haig Solicitors

Heard at Field House on 12 February 2024

DECISION AND REASONS

Introduction

1. The Secretary of State challenged the decision of the First-tier Tribunal allowing the claimant's appeal against his decision on 26 August 2021 to refuse the claimant's human rights claim and to refuse to revoke a deportation order made on 2 July 2009 and enforced on 14 July 2009. The claimant is a citizen of the People's Republic of China who has lived in Italy since leaving the UK.

2. The claimant and his wife have three children, two daughters now aged 20 and 22, and a son aged 15. I do not make an anonymity order, as none has been requested, but I will not use their names in this decision. I refer to the family members as the wife, the elder daughter, the younger daughter, and the claimant's son. All three children have British citizen status since 2013.
3. **Mode of hearing.** The hearing today took place as a blended face to face and Microsoft Teams hearing. The Mandarin Chinese interpreter booked for the claimant's wife's evidence appeared by video link. All other witnesses and representatives were present in person. I am satisfied that the hearing was completed fairly, with the cooperation of both representatives.
4. For the reasons set out in this decision, I have come to the conclusion that the Secretary of State's appeal succeeds and the claimant's appeal must be dismissed.

Procedural matters

5. **Non-compliance with directions.** I record that the appellant's representatives failed to comply with the Upper Tribunal's Electronic Bundle Guidance or to comply fully with the directions given in the decision of Upper Tribunal Judge Canavan sent to the parties on 4 December 2023. The directions required that:

“... 20. **The parties** shall file and serve any up-to-date evidence relied upon at least 14 days before the resumed hearing.”

The time limit in [20] expired on **29 January 2024**.

6. On 7 February 2024, the applicant's representatives filed the First-tier Tribunal bundle. It does not comply with the Upper Tribunal's Electronic Bundle Guidance.
7. On 8 February 2024, the respondent's solicitors e-filed a bundle of correspondence about therapy undertaken by the younger daughter in the autumn of 2022. There was no rule 15(2A) application and the only explanation made in Mr Lam's oral rule 15(2A) application at the hearing was that the younger daughter is a very private person and had not told her mother or the solicitors until last week that this had occurred.
8. I asked Mr Lam, who appears for the claimant, whether the younger daughter should be treated as a vulnerable witness: he said that was not necessary. In the interests of justice, I have admitted this evidence but for the reasons I give in my decision, am unable to place much weight on it.
9. On 12 February 2024, Raffles Haig informed the Upper Tribunal that the claimant's three witnesses would be adopting their witness statements from December 2021 and 'then leaving it to the other side to cross-examine, if required'. In the event, I permitted some supplementary

questions and I was unable to accept the witness statement of the respondent's wife, because she had no recollection of how she checked its contents.

10. I informed Mr Lam that I would require a written explanation from his instructing solicitors for the failure to comply by close of business on the date of hearing, 12 February 2024. At the date of finalising this decision, I have not seen any such explanation.

Background

11. The following facts and matters emerge from the papers and (where credible) the oral evidence before me today. The claimant and his wife entered the UK in October 2021, on a 6-month visit visa, and overstayed. They were not yet married. The claimant's wife was heavily pregnant with their elder daughter, who was born at the end of January 2002 and is now 22 years old.
12. While in the UK, they say that they lost their Chinese passports. In 2002, they both applied for visit visas to return to the UK from Italy. The claimant's application for a visit visa was refused, but he re-entered the UK undocumented in November 2002, with the help of an agent. The claimant's wife was granted a visit visa and re-entered the UK in September 2002.
13. After their second arrival in 2002, the claimant and his wife went into the clothing business together, without leave, selling handbags, and later, Italian clothes and knitwear. The claimant's wife became pregnant again, and the parties married. In September 2003, their younger daughter was born. She is 20 years old now.
14. In 2005, the claimant applied unsuccessfully for a work permit. When it was refused, the claimant and his family did not leave the UK but continued to grow their clothing business here. None of them had leave, and at that time, all of them were citizens of the People's Republic of China only.
15. In 2007, the claimant was arrested and charged with fraud/embezzlement in connection with sale of counterfeit designer handbags. His wife explained that they had been unaware that selling counterfeit handbags was not lawful in the UK.
16. On 6 October 2008, the claimant was convicted, and sentenced to 3 years' imprisonment. The claimant's wife was again heavily pregnant. She visited her husband in prison, but concealed the circumstances from the children, who only learned that the claimant had been deported 'about 2 years ago', that is to say, at or shortly after the First-tier Tribunal hearing.
17. In December 2008, the couple's only son was born. He is 15 years old now. He has never lived with his father, who was removed to China on 14 July 2009 when he was 7 months old, on the Facilitated Returns Scheme.

The claimant returned to live and work in Italy after his removal. The claimant's parents and his brother were also living in Italy, so he had family support there. He works in a garment factory.

18. The claimant's wife told me that she and the claimant had decided that she should stay in the UK, without leave, until the children could be registered as British citizens. She has worked very hard to build up her business, but from 2002 to 2013, she did so unlawfully as she had no leave to remain. Despite being in the UK for over 22 years, she speaks very little English and gave evidence through a Mandarin Chinese interpreter.
19. The claimant's wife had no leave either to live in the UK or to pursue business activities here until 2013, when she was granted leave because the children had been registered as British citizens. The claimant's wife and children visited him in Italy and in China over the years, and stay in touch by electronic means.
20. On 3 March 2020, the claimant applied for the deportation order signed on 2 July 2009 to be revoked. He produced evidence of a clean criminal record in Italy.
21. On 26 August 2021, the Secretary of State refused, stating that having given individual consideration to the revocation application, he met none of the deportation exceptions in paragraph 399A of the Immigration Rules HC 395 (as amended) or section 117B and 117C of the Nationality, Immigration and Asylum Act 2002 (as amended).
22. The claimant had no right of appeal against the decision to refuse to revoke the deportation order, but he was entitled to an out of country right of appeal against the human rights element of the decision, which he exercised.
23. The claimant appealed to the First-tier Tribunal.

First-tier Tribunal decision

24. The First-tier Judge received evidence at a hearing on 21 July 2022 from the witnesses who have appeared today, based on witness statements dating back to 14 December 2021. The claimant's son was then 13 years old. The First-tier Judge found that the unchallenged evidence was that the separation had been painful for the children and for the wife, and at [19]-[20] that the claimant's son 'suffers moderate anxiety and depression'. It would be unduly harsh for the children, now all British citizens, to be expected to live in China or Italy with the claimant. The Judge did not address whether it was unduly harsh to expect them to live in the UK without their father, as they have
25. The Judge noted that the sentencing remarks from the claimant's conviction had not been provided and that there was no evidence before him about whether the claimant had been released on his earliest release

date, or what was the context of the conviction. He took account of the claimant's not having offended again.

26. The summary above regarding the counterfeit handbags was not before the Judge: it was disclosed today in the oral evidence of the claimant's wife.
27. At [35], the Judge reminded himself that he was only concerned with ECHR grounds but concluded that the decision was disproportionate as the claimant could meet the requirements of paragraph 297 of the Rules, applying *TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department* [2018] EWCA Civ 1109. He found that family life existed between the claimant, his wife and the three British citizen children, who had suffered as a result of separation from the claimant.
28. The Secretary of State appealed to the Upper Tribunal.

Error of law decision

29. On 4 December 2023, Upper Tribunal Judge Canavan in her error of law decision found that the First-tier Judge had erred in equating the 'unduly harsh' test in paragraph 399(a) of the Rules with the section 55 best interests of the child:

"12. The test of 'unduly harsh' does not involve a balancing exercise, but the courts have repeatedly found that the test of 'unduly harsh' provides an elevated threshold in cases involving deportation of foreign criminals. The test 'does not equate with uncomfortable, inconvenient, undesirable or merely difficult' and denotes something 'severe, or bleak'. The addition of the adverb 'unduly' 'raises an already elevated standard still higher': see *HA (Iraq) & Others v SSHD* [2022] UKSC 22 [41] and *KO (Nigeria) v SSHD* [2018] UKSC 53.

13. Nothing in the findings made by the judge indicates that he had this elevated threshold in mind. The judge concluded that the family had found their continued separation 'difficult and painful' but failed to explain how or why these difficulties met the stringent threshold required by paragraph 399(a) of the immigration rules, or more appropriately, section 117C(5) NIAA 2002. His findings were more akin to the milder description of deportation being 'difficult' emphasised by the Supreme Court in *HA (Iraq)* rather than the elevated threshold of 'severe or bleak'."

30. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

31. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal and in addition to the new evidence about the younger daughter's mental health difficulties in the autumn of 2022, and Mr Lam's skeleton argument prepared for this hearing.

32. I heard oral evidence from the claimant's wife, but I am not able to place much weight on it save where it is corroborated by documents or other evidence. The claimant's wife was an evasive witness and appeared to be crafting her evidence to fit what she thought would best assist the claimant's case. Her timelines were unreliable and overall, she was an unimpressive witness.
33. The oral evidence of the two daughters was reliable and credible but the circumstances of the claimant's removal had been concealed from them by the claimant and his wife until about two years ago (when the appeal was heard in the First-tier Tribunal). The daughters were both adults, both when the First-tier Tribunal heard the case, and now.
34. Section 55 best interests considerations apply only to the claimant's son, who was 13 before the First-tier Tribunal and is 15 now. I do not have a statement from him, nor any evidence from his school or doctor. The only evidence about him is in the psychological report of Mr O'Doherty, finalised (probably) in January 2022.

Mr O'Doherty's report

35. Kevin O'Doherty has a BSc (Hons) in Psychology and a Diploma in Cognitive Behaviour therapy, as well as an education certificate and a Diploma in Health Psychology. His report is based on an assessment which took place on 13 December 2021, in the absence of any GP or medical records about the family members. It is unclear how he assessed the claimant, who would have been in Italy then.
36. Mr O'Doherty noted that he had not been provided with any of the witnesses' GP notes or medical records. Whilst some psychological symptoms had been mentioned by all of the family, they had remained relatively stable over the medium to long term. No historic mental health issues or forensic history had been mentioned to him. He had not been asked to review the witnesses' medical records.
37. In January 2021 (or perhaps 2022), when he wrote his report, Mr O'Doherty was studying for a Masters degree in Forensic Mental Health. He is a graduate member of the British Psychological Society and is registered with the International Association of Forensic Mental Health Services and the American Psychological Association. He is not medically qualified.
38. Mr O'Doherty recorded that the claimant had no physical or mental health conditions, nor did he have problems with alcohol or drugs. He lived alone in Italy and worked in fashion and clothes. His parents had lived in Italy but returned to China before the pandemic started. The claimant spoke Italian, Mandarin Chinese, and English.
39. Mr O'Doherty had carried out psychometric testing on the claimant, using the Patient Health Questionnaire (PHQ9) and Generalised Anxiety Disorder Assessment (GAD7). Both were based on self-reported symptoms and Mr O'Doherty considered that the claimant was 'experiencing symptoms

related to anxiety, worry, depression and sleep interruption' at a moderate level, which he considered to be directly related to the claimant's inability to return to the UK and rejoin his family.

40. The claimant's wife was interviewed with the younger daughter translating for her. She also had no physical or mental health problems, apart from buying an iron supplement for anaemia. The wife did have some sleep problems, thinking and worrying, and normally slept only about 4 hours a night. She worked long hours and then came home to cook and care for her children.
41. The wife normally visited the claimant in Italy 2-3 times a year, when she could. He sent some money to help with the family because he was working in Italy. If he could come back, he could help her care and support the family which would have a positive impact on them all.
42. The elder daughter was studying for her Geography degree, and was in the second year of her course. She had previously been interested in investment banking but thought now that she might want to be involved in consultancy and sustainability/environment work. She rented accommodation with a group of Durham University student friends. Her mother had worked very hard, and the elder daughter helped with translating, official appointments, family issues and the business generally. She helped with the business from a distance even when at university.
43. She had never had counselling or diagnosed mental health problems, although sometimes she experienced anxiety and pulled out her hair. She had sleep problems, partly worrying about her course, and partly missing the claimant. Initially, when he left, her mother told the children that the claimant was on holiday. The elder daughter had missed her father's presence at all the important events and milestones in her life, and considered that his absence had an impact on her brother, who lacked a male role model.
44. The younger daughter told Mr O'Doherty that she was studying A levels at a sixth form college, expecting good results from her examinations in Art, Mathematics and Geography. She intended to study Game Design at University and then to work in that area. She had studied Mandarin Chinese from the age of 8 and was a confident speaker of the language. She had a small group of friends, with whom she socialised mainly when at school rather than outside school.
45. The younger daughter took iron supplements for anaemia, but no other medication and had no diagnosed mental health issues, either in the past or presently. She saw the claimant two to three times a year in Italy, when she enjoyed a range of activities, but missed him at home in the UK. She felt sad and anxious, frequently.
46. The claimant's son was accompanied by his mother and two sisters during the assessment interview. He was at a state secondary school, where his favourite subjects were maths, history and science. He received no extra

help or support there, and had no difficulties or additional support needs. His attendance and punctuality were good, over 98%. He had a wide range of friends, both at school and outside school. He was a good speaker of Mandarin Chinese, attending Mandarin lessons every Sunday afternoon, but was not good at reading or writing it.

47. The claimant's son was determined to work hard and succeed in education, and in his career. He had not decided yet what he would like to do for a job. He was in good physical health, taking no prescribed medications. He had no history of diagnosed mental health problems and was a keen sportsman, excelling in a range of sports, including athletics and running.
48. The claimant's son spoke to his father over WhatsApp for at least an hour every day, his father asking him how he was doing at school, what he was eating, and so on. The claimant's son found this very reassuring but would like his father to be able to return to the UK so they could have more father/son activities. Mr O'Doherty commented that:

“[The claimant] had to leave the UK before [the son] was born so [the son] only has memories of brief visits to Italy to spend time with his father. ...

As a psychologist, it is beyond my area of expertise to make comment on any physical injuries that may have been sustained by [the son]. Furthermore, I am unable to comment on the diagnosis, treatment or prognosis of any alleged physical injuries or pre-existing physical conditions. Where required, information about physical injuries or health issues should be sought from the relevant medical specialist.”

No such evidence is before me.

49. Mr O'Doherty's conclusions on the son were as follows:

“In the case of [the son], who is currently 13 years of age, I am of the opinion that the continued absence of his father here in the UK is having a detrimental impact on him socially and psychologically. Mother is doing an excellent job at caring for and supporting each of the children, but I do feel that [the son] would benefit greatly from having his father in his life at this stage. [The claimant's son] is a determined young man who excels at education and related activities even under the current difficult circumstances. I do feel however that he is at a more impressionable age currently and would very much benefit from having his father present. ...

4. [The claimant's son] is currently 13 years of age and has never lived with his father full time here in the UK or anywhere else. Keeping regular contact with his father is clearly very important for him at this stage of his life and he benefits from frequent telephone contact and visits. This client would benefit greatly however in the event that his father is able to re-join the family here in the UK.”

50. Mr O'Doherty confirmed that he was not involved in treating the claimant and would not be providing treatment for him. He was not associated with

any person who had provided treatment nor had he recommended any particular treatment provider.

Claimant's witness statement

51. The evidence before me from the claimant was his witness statement of 14 December 2021. He is resident in Italy but retains his Chinese citizenship. He has a permanent right of residence there. In December 2021, his brother was a businessman in Italy and the claimant was in stable employment in his brother's fashion company. The claimant's wife and children visited him regularly in Italy.
52. The claimant had been law abiding since moving to Italy. He missed his family and considered that the children were affected by his absence, particularly his son, who was 13 years old and always cried when he left at the end of a visit.
53. His wife was the company director of a clothing company in the UK and was very hard working. If he could rejoin her, the business could expand and pay more taxes. His three children were all British citizens and it was 'very detrimental and unreasonable for them to abandon their lives and education in the UK to continue their family life with me in UK'. It would be 'difficult, if not impossible' for his wife to move to Italy in December 2021 because she still had two children at home and had to provide a home for the eldest in the holidays.
54. There was no evidence from the claimant's son, the only one of his three children who was a minor when the application was made. There is no evidence from his school either. He did not attend the hearing or provide a witness statement.

Oral evidence

Wife's evidence

55. The claimant's wife is illiterate in English, and speaks it very little, except for what she needs for her business, price and quantities. She manages tax returns and so forth with the help of accountants. She gave evidence with the help of a Mandarin Chinese interpreter. She attempted to adopt her December 2021 witness statement but it rapidly became clear that she had not refreshed her memory, did not remember its contents, and might not have checked it at the time.
56. I refused to admit the statement and the wife gave evidence orally only.
57. The wife's evidence was contradictory as to the time sequence and she frequently answered different questions from those which had been asked. I had to ask her repeatedly to focus on the question asked. At the end of her evidence, I asked whether she had understood the interpreter and she confirmed that she had. I did not find the wife a credible witness and have been unable to place weight on much of what she said.

58. The wife said that the last 15 years without her husband had been really difficult. Her daughters had grown up with no man in the house, which was not really suitable. Her son lacked the love of his father and had academic problems. He was home all the time and in trouble. The wife had to work all the time so had no opportunity to look after him.
59. In relation to the fraud offence, she said that they had both been very young and not understood the law in the UK. They had sold counterfeit handbags and the claimant's had paid the penalty. The claimant was a responsible person now and he loved his family. The claimant had made a mistake, but he was a reformed, good man now. She asked me to consider letting him come back and be with his family again. They spoke electronically over WeChat every day, and during Covid-19, by telephone. Just before Christmas 2023, the family had joined the claimant in Italy, then they all went over to China. She could only stay two weeks because of her business.
60. The family got status in 2013. All the children were here, so she had to look after them. The wife confirmed that she had worked unlawfully and stayed 11 years in the UK before getting leave to remain. She and the claimant opened their shop in 2002 and initially just sold normal handbags for a bit of cash. In 2005, when the claimant made an unsuccessful application for a work permit, the wife was not working but was home with the two daughters, who were very young.
61. The wife was asked why she had not accompanied the claimant when he was removed in 2009, given that she still did not have leave and all her children only had Chinese citizenship at that time. The wife said her children had been born in the UK and had to go to school here. She had agreed with her husband that they would stay here and wait long enough to make a successful application for leave to remain in the UK. She had nothing in Italy and nowhere to stay. The wife denied that the claimant's parents were then in Italy, as he had told the psychologist. When it was pointed out to her that he had said they were living in Italy, she said that they might have visited from China for a short period.
62. She did take personal responsibility for her conduct. It had been a hard time. the shop ran with very few employees, as it was too expensive to employ people. Her daughters helped out when they could, and there were two young people who sometimes worked half days, who were students. She sold clothes imported from Italy. The wife had visited her husband in prison, when she had time, but she did not tell her children where he was, because they were too young.

Elder daughter's evidence

63. The elder daughter adopted her witness statement from December 2021 (there was no new witness statement) and confirmed that she is 22 years old now, and was just seven when her father left the UK.

64. The elder daughter has successfully completed her undergraduate Geography degree at Durham University. In September 2024, she will complete a Masters in Risk Security Politics, also at Durham. She told me that one of her biggest dreams is to make her father proud: he had been unable to help her move into her University accommodation, but he had been able to watch her graduate by video link from his home in Italy. She funded her degree partly by student loan, but with help from her mother. As an adult, she expected to finance her own studies as much as possible, to relieve any financial burden on her mother.
65. Her father paid for everything when they visited him for holidays in Italy and China, and gave money to her mother also. The elder daughter said that she thought that her parents were able to work together as her father was working in an Italian garment factory and her mother sells Italian knitwear in her shop. However, her mother had more than one supplier for her shop. The family all lived above the shop, and her parents both worked there until her father went away.
66. The elder daughter and her siblings had only ever known the UK, and her mother had a business to run. She understood that this was why they did not go to Italy in 2009 when her father left. She had not known why he left until two years ago: her mother protected the children. All she knew was that her father could not come to the UK and that they had to visit him. Her father was always very upset at the airport, whenever the family left to return to the UK.
67. The claimant's wife had worked very hard and had a lot to deal with, raising three children alone and running her business. She tried hard to fulfil every single role but the youngest child had grown up with 'barely one parent', his sisters helping to raise him.
68. In answer to questions from me, as the elder daughter attended in Muslim dress, she said that she had converted while at University, in October 2020. Previously, from the age of 6, she had been vegetarian, but as a Muslim, she eats meat now. The family were not Muslim. The first person she told was her father, who helped her work out how to approach her mother about it. It had not been the easiest of journeys, but with her father's help, she had managed it.

Younger daughter's evidence

69. The younger daughter is the middle child. She attended court and gave evidence, adopting her December 2021 statement. There was new evidence, which I admitted, about her mental health at the beginning of her studies at the University of the Arts In London, where she is studying Game Design.
70. The younger daughter said that she had problems whilst at school, which she downplayed, from about year 2 (the year her father went to prison, when she would have been 5 or 6 years old). Her teacher thought the younger daughter's behaviour was unusual, but she did not talk to her

mother about it, nor did it interfere with her school work. She was not really aware of being in difficulty. She had not told the psychologist, Mr O'Doherty, of any previous mental health history.

71. At University, she lived with other students, and had a small group of friends: her friend group was different from the people with whom she lived.
72. The evidence adduced for the present hearing is a small bundle of emails. The first, which is undated, thanks her for contacting Barking and Dagenham talking therapies and says that they will be in touch within 7 days. The next, again undated, is the first contact. The younger daughter said that she had completed all the treatment sessions during her first term at University. She was currently struggling a bit with her course. She paid for it herself, using student finance, which was enough to cover her needs.
73. On 1 September 2022, a letter headed 'IAPT initial therapy letter' from Talking Therapies Barking & Dagenham IAPT to Dr Kassim Al-Kaisy at the Urwick Medical Centre in Dagenham records that the applicant was assessed on 13 January 2022 with symptoms consistent with a diagnosis of ICD-10 F40.1 Social Phobia, for which she was offered a course of treatment 'in line with standard NICE guideline protocols'. The agreed goals were to reduce overthinking; to be able to ask for help; to be able to open up more to others and to stop procrastinating. A discharge report would be sent to Dr Al-Kaisy highlighting the outcome of the treatment. I have not seen that report.
74. That completed the oral evidence before me.

Conclusions

75. I am not seised of any challenge to the deportation order or the Secretary of State's refusal to revoke it. The question for me is whether the Secretary of State's refusal to exercise his discretion breaches the UK's international obligations under Article 8 ECHR or is in breach of the section 55 best interests of the claimant's son, who is still a minor. No private life is relied upon.
76. As far as the claimant's wife is concerned, I remind myself that I can give little weight to their relationship which was established in 2002/2003 at a time when they were in the UK unlawfully: see section 117B(4)(b) of the Nationality, Immigration and Asylum Act 2002 (as amended).
77. It is right, but neutral, to say that she is self-financing but to her disadvantage that even after 23 years in the UK, she does not read or write English and speaks only such small amounts as are required to discuss sizes and quantities for her clothing business. I note that the claimant's wife has ensured that all the children study Mandarin Chinese every week, but she has not studied English, or at least, not successfully.

Her inability to speak or read English is to her detriment under section 117B(2), because it reduces her ability to integrate into UK society.

78. I have not placed any determinative weight on the implicit admission by the claimant's wife that both of them were involved with the claimant's fraud offence. The police charged and convicted the claimant and that is the factual matrix I take into account.
79. I remind myself that no good reason, other than an intention to game the UK's immigration system and obtain British citizen status for the children, has been given for the claimant's wife not taking the daughters, and her newborn son, to China or to Italy when he was deported. She lied to me about the claimant's circumstances in Italy: she said that his parents were not there, when all the evidence is that they were, and that she would have nowhere to go, when he was working for his brother, who has a clothing business in Italy.
80. The claimant's wife made it clear that there had been a family decision taken by her and the claimant in 2009 that she should remain in the UK, unlawfully, running a business which she had no leave to pursue, until the children could be registered as British citizens. That shows a quite staggering disregard for the UK immigration system and is very much to her discredit.
81. I have considered whether there is a genuine and subsisting parental relationship between the claimant and his adult daughters: see Exception 2 at section 117C(5) of the 2002 Act. I do not consider that there is. The claimant's daughters are both at University and have independent lives. Although they are clearly fond of him, and miss him, their circumstances are not such as to amount to *Kugathas* family life. They have done well in their education and are fully integrated British citizens with a promising career ahead of each of them. They are financing their degrees mainly (in the case of the elder daughter) or entirely (in the case of the younger daughter) by student loans. The claimant's wife helps the elder daughter with some additional money, and the daughter helps her in the business, even while away at University, because she speaks good English.
82. The younger daughter's claimed difficulties at school in 2009/2010 were not supported by any contemporaneous medical or school evidence, and her difficulties in 2022 have been resolved. I do not find that it would be unduly harsh for the daughters to remain in the UK, as they have for the last 15 years, without their father: see Exception 2 at section 117C(5) of the 2002 Act.
83. I have considered whether there are 'very compelling circumstances' over and above those described in Exceptions 1 and 2: see section 117C(6). Again, I am not satisfied that this is made out. The claimant is a good and supportive father to his daughters, as evidenced in particular by his support for the elder daughter's decision to convert to Islam and begin wearing Muslim dress, but there is no medical or other evidence of any

compelling circumstances for which he would need to be re-admitted to the UK.

84. I next consider the circumstances of the claimant's son. There is nothing direct before me from the claimant's son: no witness statement, no medical evidence, and no school reports. I am prepared to accept that he does have a parental relationship with the claimant. He telephones him over WeChat every day, and visits regularly. When interviewed in December 2021, the claimant's son was doing well at school, with a 98% attendance record, had plenty of friends, and was not in difficulty.
85. The oral evidence of the claimant's wife that he is now in trouble and failing to attend school is not supported by anything from the school or his doctor, and I do not find it credible. It is of course possible that like many teenage boys, he is more challenging at 15 than at 13 years old, but if it were more serious than that, there would be evidence before me beyond the wife's unreliable oral evidence.
86. Neither Exception 2 nor the test in section 117C(6) is met in relation to the son. The claimant's wife has raised the son mostly alone, with visits to his father in Italy. The two daughters said that she had worked a lot and he had not received much parental support, but he has done well, on the evidence, and it is clear that she is a loving and supportive mother. His parental relationship with his father has been conducted at a distance for his entire life. It would not be unduly harsh for the situation to continue as the claimant and his wife had arranged, for the remainder of the son's childhood.
87. I have to consider whether it is in the son's section 55 best interests for the claimant to be readmitted. I remind myself that section 55 is not a trump card. The son is a British citizen and cannot be expected to live in China or Italy. He speaks to his father for an hour a day, and visits him several times a year. While it would clearly be better for both parents to raise him together, I am not satisfied that this is a situation where the son's best interests outweigh the UK's right to control immigration, or the claimant's previous offence.
88. I conclude that the claimant's continued exclusion is lawful and proportionate and remake the decision by dismissing the appeal.

Notice of Decision

89. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the claimant's appeal.

Judith A J C Gleeson

Appeal Number: UI-2022-006578

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 14 February 2024