IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000778
First-tier Tribunal No: HU/53271/2023
IA/00299/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 January 2025

Before

UPPER TRIBUNAL JUDGE LANE

Between

DONGZHOU CHEN
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Forrest
For the Respondent: Ms Arif, Senior Presenting Officer

Heard at Edinburgh on 7 November 2024

DECISION AND REASONS

1. The appellant's immigration history is set out by the First-tier Tribunal judge at [1]:

   The appellant is a citizen of China, born on 23/5/1986. The appellant arrived in the UK on 8/3/2010 on a student visa. He claimed asylum on 7/5/2020. This was refused by the respondent on 22/2/2021. The appellant appealed this decision and his appeal was dismissed by Immigration Judge Farrelly sitting in the First tier Tribunal on 8/10/2021 (2021 determination). On 3/2/2023 the appellant applied for leave to remain in the UK on the basis of his family life with his partner Tit Shing Lee (the sponsor). The respondent decided by letter of 27/2/2023 to refuse the application.

The appellant appealed against the Secretary of State's decision to the First-tier Tribunal which dismissed his appeal. He now appeals to the Upper Tribunal.

2. Upper Tribunal Judge Reeds granted permission to appeal in the following terms:

> The FtTJ reached the conclusion that there were no insurmountable obstacles to the appellant and his partner continuing family life outside the UK. When considering the proportionality exercise outside the rules, the applicable test is whether to refuse leave to remain would result in unjustifiably harsh consequences for the appellant or their partner such that the refusal would not be proportionate. The test requires a tribunal not only to assess the issue of insurmountable obstacles (or the degree of hardship) but to balance the impact of refusal of leave to remain on their family life against the strength of the public interest. The decision of the FtTJ of paragraph 21 22 identifies the balancing factors on the public interest side of the balance but arguably as the grounds set out, when assessing the proportionality of the decision, the other side of the balance including the issue of delay and taking into account the rights of the British citizen who lived in the UK for 35 years and whether it be reasonably expected that he would follow the removed person to keep the relationship intact were issues that were not arguably addressed in that overall assessment.

3. Mr Forrest, for the appellant, relied on his skeleton argument. This defines the issue before the Upper Tribunal as follows: 'whether the First-tier Tribunal erred in not carrying out the Article 8 ECHR proportionality exercise.' Mr Forrest submitted that the judge had failed, in particular, to consider the human rights of the sponsor, as Upper Tribunal Judge Reeds had observed. The sponsor had left Hong Kong in 1988 and had lived in the United Kingdom ever since.

4. Ms Arif, for the Secretary of State, submitted that the appellant had not challenged the appellant's failure to meet the requirements of the Immigration Rules (as to the existence or otherwise of very significant obstacles to the appellant's return to China). Accordingly, the entire emphasis of the appeal had rested on an Article 8 ECHR proportionality exercise against the background of that failure. The attribution of weight to items of evidence the exercise had been a matter for the judge and there was nothing in the decision to suggest that the judge had not carried out that exercise rationally. Most significant, in Ms Arif's submission, was the fact that, contrary to the assertion in the grounds and Upper Tribunal Judge Reeds' assumption, the judge had considered the circumstances of the sponsor in some detail. At [2], the judge had recorded the sponsor's claimed reasons for being unable to return to China:

The appellant is a citizen of China. He came to the UK in 2010 as a student and has remained in the UK since then. The appellant is gay. He is in a same sex relationship with Tit Shing Lee who is a British citizen. The appellant states that he cannot return to China due to his sexuality. In addition he says that his family will not support him on return due to his sexuality. The appellant states that the sponsor cannot relocate to China as he has resided in the UK for 35 years and does not speak fluent Mandarin. The sponsor also has a daughter in the UK whom he will miss if he relocates to China. The appellant says that he and the sponsor would face persecution as a same sex couple living in China. In this respect he relies upon a country expert report by Professor Mario Aguilar.

Considering the appellant's inability, as a gay man, to show very significant obstacles to his return to China, the judge at [15] had made observations which apply equally to the sponsor, the appellant's partner:

In terms of paragraph 276ADE(1)(vi) of the Immigration Rules; the 2021 determination found that there were no very significant obstacles to the appellant reintegrating into China. The appellant is familiar with Chinese culture, he speaks Mandarin, is in good health and is educated to degree level. Since the 2021 determination, by inference the respondent has accepted the appellant is gay. However the evidence indicates that the LGBT community are not persecuted in China. Whilst the appellant's sexuality may cause some difficulties for him in China these difficulties fall short of the threshold for very significant obstacles to integration. The CPIN indicates that the hukou system has been significantly relaxed in recent times, particularly for smaller mid-sized towns. I do not accept therefore that the hukou system would represent a very significant obstacle to the appellant.

Ms Arif submitted that Upper Tribunal Judge Reeds was correct to note that the judge's concluding paragraph of the decision at [22] concentrates exclusively on the appellant but there was no need for the judge to repeat his consideration of the sponsor from earlier in his decision.

5. I agree with the submissions of Ms Arif. Read as a whole, I am satisfied that the judge has adequately taken into consideration the rights and circumstances of the sponsor. I accept the submission that it was unnecessary for the judge to repeat in his conclusions what he had already noted regarding the sponsor. Whilst it may perhaps have been better for the judge to address the sponsor in his conclusion, it is entirely clear that he had considered all relevant matters concerning the sponsor's involvement in the appeal and, most significantly, reached an outcome manifestly available to the Tribunal on the evidence; the appellant did not meet the rules regarding very significant obstacles and the judge had (correctly) attached little weight to his relationship with sponsor which had developed at a time when the appellant had been living unlawfully in the United Kingdom.

6. In her closing submissions, Ms Arif sought to rely on *Volpi [2022]* EWCA Civ 464 at [2]: ‘an appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.’ This citation is, in my opinion, apt. given that I am satisfied that the judge did have in mind all the relevant facts (including those of the sponsor) when he reached his conclusion, I consider that I should refrain from interfering with the conclusions of the fact-finding Tribunal unless those conclusions have no rational basis or are otherwise plainly wrong. That is not the case here.

Notice of Decision

The appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 10 January 2025