



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/05357/2014
OA/05358/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 12 August 2015**

**Decision & Reasons
Promulgated
On 7 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**XIULING HE (FIRST APPELLANT)
XUE HAO (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - BEIJING

Respondent

DECISION AND REASONS

1. The appellants Xiuling He and Xue Hao are citizens of China. The first appellant is the mother of the second appellant. The first appellant was born on 1 February 1971 and the second appellant on 15 May 1996. On 11 March 2014, the appellants were refused entry clearance to the United Kingdom as the spouse and child respectively of a person present and settled in this country, namely the sponsor Mr Thai Xie. The appellants appealed to the First-tier Tribunal (Judge J D L Edwards) which, in a decision promulgated on 6 March 2015, dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.

2. Granting permission, Judge Robertson stated:

The submission in the grounds that the judge failed to give reasons for his decision has arguable merit. The judge heard from the appellant and he found the sponsor's evidence was "confused, vague and rambling and contradictory" and therefore found that he could not trust his evidence that he was the father of the second appellant. No examples were given as to why the judge so found. Furthermore, the Cellmark DNA report confirms that the sponsor is the father (and the name of the father in the Cellmark report is the same as that of the sponsor in his UK passport). The judge states that all the report does is "... confirm the minor appellant is the son of the parents giving the names they have. In the case of the sponsor that is wholly unsatisfactory in view of the quality of his evidence." However, Cellmark is a Home Office approved DNA test provider; it is reasonable that Cellmark will have carried out the appropriate identity checks prior to obtaining samples for the purposes of carrying out the test. It is arguable the judge gave insufficient consideration to the report before rejecting it on the basis of the evidence of the sponsor.

3. The judge found at [20] that Mr Xie gave "long rambling answers" to questions put to him in cross-examination noting that his answers "were contradictory." The judge had not specified what parts of his evidence he found to be contradictory. At [21] the judge noted the sponsor had said that his correct name was Xue Qun. When he had claimed asylum, his name had been recorded as Xhe Hui Xie. The sponsor had "not bothered to change this since." The judge also recorded [19] that Mr Xie is a British citizen.
4. The judge was also critical [25] of the fact that the Cellmark report which was dated 28 April 2014 had not been submitted to the respondent "at some stage between that date and the date of the hearing in an attempt to resolve matters without the need for an appeal ...".
5. The judge concluded [28] that "... it is impossible for me to find that Mr Xie who gave evidence to me is the person named as the father in the Cellmark report." The question is whether the judge's findings and the reasons he has given for those findings justify such a conclusion. As Judge Robertson noted, Cellmark carry out their own procedures to ensure the identity of those individuals from whom samples are obtained may be confirmed. Whilst there may have been no evidence from the appellant regarding adherence to such procedures, it is unlikely that the appellant expected the judge to find as he did at [28]. Further, at [27] the judge found that he did not "accept Mr Xie's explanation for having at least two names in China and UK." The First-tier Tribunal should be very careful regarding the transliteration of names from (for example) Mandarin to English; it is highly likely that there will be variations in spelling as a result of such transliteration. Further, Mr Xie told the judge that he had sent his passport to the Home Office to have the spelling error in his name corrected and there was also evidence in the form of a letter from the Home Office referring to a "document" submitted by the sponsor. The judge rejected that evidence [27] but only for the somewhat weak reason that the letter had not referred to a "passport" but only "a document."

Furthermore, the judge's characterisation of the sponsor's evidence as "confused, vague, rambling and contradictory" is again not supported by specific reference to parts of either the written evidence of the sponsor or what he actually said in oral evidence at the hearing. I am also not clear why it should have weighed against the appellant that his solicitors had not submitted a Cellmark report to the respondent "in an attempt to resolve matters without the need for an appeal." Having regard to all these matters, I am not satisfied that the judge has provided adequate reasons for his findings. I consider that the evidence needs to be looked at afresh. With that in mind, I set aside the decision of the First-tier Tribunal and remit the matter to that Tribunal (not judge J D L Edwards) to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 6 March 2015 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane