



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

Appeal Numbers: IA/14725/2015
IA/14727/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd June 2016**

**Decision & Reasons
Promulgated
On 5th July 2016**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**L B
A D
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P Lewis, Counsel, instructed by Astor Visas

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellants. This direction

applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellants, both citizens of the People's Republic of China, appeal with permission against the decision of the First-tier Tribunal refusing their appeal against the respondent's refusal to grant them further leave to remain in the United Kingdom as a Tier 2 Migrant and partner, the applications having been made on 28th January 2015. The applicants are civil partners having entered into a civil partnership or marriage on 17th April 2014 in the United Kingdom. They have no other citizenship and are both still citizens of China.
2. These are applications saved by the provisions of the Immigration Act 2014 (Commencement) Order 2014. The parties originally came to the United Kingdom as Tier 4 Migrants and therefore there was a valid right of appeal.
3. The respondent's refusal was based on the failure of the principal appellant's employer to provide any documentary evidence that the job had been advertised through Jobcentre Plus or its successor, Universal Job Match. The respondent contacted the employer, but did not receive a satisfactory response from him. She did not contact the appellants or their representatives for correct documents.
4. The respondent's discretion under paragraph 245AA of the Rules allows her to "contact the applicant or his representative in writing and request the correct documents". Ms Holmes accepts that the documents were never requested from the applicants or their representative in writing or otherwise and an attempt to obtain the relevant evidence from the employer is not a proper exercise of the discretion under paragraph 245AA(b).
5. Accordingly, the respondent's decision is not in accordance with the law and I allow the appeals to the extent that these applications remain before the Secretary of State for a lawful decision in accordance with the Rules.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision. I re-make the decision in these appeals by allowing them as set out in paragraph 5 above.

Signed: **Judith A J C Gleeson**
Upper Tribunal Judge Gleeson

Date: 4 July 2016