



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

**Appeal number: OA/03117/2014  
OA/03119/2014  
OA/03121/2014**

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On February 23, 2016**

**Decision & Reasons Promulgated  
On February 24, 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MRS ZHOULAN FAN  
MISS QUIAN HE  
MISS XIAOBIN HE  
(NO ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE ENTRY CLEARANCE MANAGER**

Respondent

Representation:

Appellant

Respondent

Mr Pipe, Counsel, instructed by Lin & Co

Mr Richards (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellants are Chinese nationals. The sponsor, Tianen He, and the first named appellant claimed to have married in 1993. The second and third-named appellants were born on March 12, 1996 and February 23, 1998 respectively. The sponsor left China in 1997 and went to Russia at a time when his wife was pregnant with the third named appellant. He arrived in UK in 1999 and applied for asylum. His application was refused but he

remained here unlawfully supporting himself through illegal work. On September 24, 2010 he was granted indefinite leave to remain under the legacy provisions albeit the name he was granted this in was Tian Ming He. The appellant then applied for a Chinese passport and was issued one in the name of Tianen He but the consequence of this was he had indefinite leave to remain in the name of Tian Ming He and a Chinese passport in the name of Tianen He.

2. The appellants applied for entry clearance on December 5, 2013 as spouse and children of the sponsor. The respondent considered their applications and refused them on February 7, 2014.
3. The appellants appealed against those decisions under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 27, 2014. The entry clearance manager reviewed the grounds of appeal but upheld the decision in a letter dated July 22, 2014.
4. The matter was heard by Judge of the First-tier Tribunal Nixon on November 18, 2014 and in a decision promulgated on November 24, 2014 the Tribunal refused their applications for entry clearance.
5. The appellants applied for permission to appeal on December 16, 2014 submitting the Tribunal had erred in its approach to the evidence.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Simpson on January 27, 2015 on the basis it was arguable the Tribunal had erred.
7. The matter came before me on the above date and I heard submissions from both representatives. At the conclusion of those submissions I reserved my decision but noted that both representatives agreed that in the event of an error in law that I could remake the decision having regard to the evidence previously submitted and also a copy of a recent Tribunal decision in respect of the sponsor.
8. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

### **SUBMISSIONS**

9. Mr Pipe adopted the grounds of appeal and submitted there had been an error in law. The starting point was that the respondent accepted the sponsor had indefinite leave to remain and that he had been granted this in September 2010. Prior to that date he had no status in the United Kingdom and he submitted it was not until the respondent sorted out the "two names" issue on his passport and leave paperwork that the sponsor would have been able to visit the appellants. He also pointed out that DNA evidence identified the children as those of the first-named appellant and himself. The sole issue between himself and the first-named appellant was whether they were in a genuine and subsisting relationship and intended to live together as husband and wife.

10. Mr Pipe submitted the First-tier Judge applied to a high a test and should have approached the evidence of contact in line with the decision of Goudey (subsisting marriage-evidence) Sudan [2012] UKUT 00041. The First-tier Judge had available before her telephone records that matched the telephone numbers on the VAF forms and she had applied to a high a burden of proof when finding at paragraph [16(6)] of her decision that the appellants had not shown the numbers called between March and November 2013 were her numbers. She also erred by attaching insufficient weight to the internet conversations and money transfers. This evidence together, he submitted, satisfied the test set out in Goudey.
11. Whilst the findings between paragraph [16(2) and (4)] of the First-tier Judge's decision were unchallenged Mr Pipe submitted that the First-tier Judge had erred by placing too much weight on the sponsor's immigration history, the fact he had not been able to visit his family and these adverse findings.
12. Mr Richardson relied on the Rule 24 letter dated February 17, 2015. He argues there were a number of adverse findings (unchallenged today) and the First-tier Judge had been entitled to place such weight as she felt appropriate when considering the parties' intentions. Whilst the telephone numbers appeared on the VAF form this was clearly not something that either the sponsor or previous counsel had drawn to the First-tier Judge's attention and bearing in mind genuineness of their relationship was questioned it was wrong to expect the Judge to go through a large bundle of evidence looking for something that might support the appellants' claim. The decision of Goudey does not mean there is no test to satisfy- that test is the Judge has to be satisfied the parties intended to live together as husband and wife. The grounds amount to a mere disagreement and the appeal should be rejected.
13. Mr Pipe responded to these submissions arguing that it was incumbent upon the Judge to consider the VAF form and she did not have to trawl through the large bundle to do this. The fact the sponsor's immigration history was poor did not mean he was dishonest. The Judge and respondent accepted he had two names for the reasons given by him. The evidence of contact plus the fact they are clearly connected were factors Judge of the First-tier Tribunal Nixon did not have regard to. He invited me to find there had been an error in law in relation to the Immigration Rules. As regards Article 8 ECHR he acknowledged that if the first-named appellant's application failed on the basis the relationship was not subsisting and continuing then the first-named appellant could not succeed under article 8 ECHR. He did however invite me to consider the children's position under article 8 ECHR.

#### **DISCUSSION AND FINDINGS**

14. In considering whether there has been an error I have had regard to my record of proceedings, the grounds of appeal, the rule 24 response and submissions.

15. The following was agreed:
  - a. The sponsor's immigration history as set out in paragraph [1] above was accepted.
  - b. The second and third-named appellants were the children of the first-named appellant and sponsor.
  - c. There were discrepancies in the marriage documentation. The parties claimed they married in 1993 but the marriage certificate was dated 2005 and did not refer to the fact it was a "replacement". The sponsor and first-named appellant both gave differing accounts for why the certificate was only dated in 2005.
  - d. The application forms were in part unreliable because:
    - i. The three appellants claimed they last saw the sponsor on October 1, 1999. The sponsor claimed he left China in 1997 and went to Russia.
    - ii. The third-named appellant claimed she first saw her father on February 3, 1998 although she was not born until February 28, 1998.
    - iii. The third-named appellant claimed she first saw her father on February 3, 1998 even though the sponsor stated he had left China before she was born in 1997.
  - e. The sponsor's Chinese registration card is dated February 12, 2012 and has him living at the appellants' address in Fuqing City. The first-named appellant had not told the authorities of his whereabouts.
16. It is against this background that the First-tier Judge considered the applications under the Immigration Rules. The appellants could only succeed under the Rules as a family. If the first-named appellant failed, then the remaining appellants would also fail under the Rules because the children's claim was based on their mother going to the United Kingdom.
17. At paragraph [16(5)] of her decision she made clear that she did not find the sponsor's use of two names was for dishonest reasons although she had unanswered questions. She also found that he had worked unlawfully but concluded by saying these two factors were indicative that he was prepared to act dishonestly. She rejected previous counsel's submission that no regard should be paid to his history.
18. Mr Pipe submitted that her approach to the sponsor's use of two names undermined her assessment to the evidence. If she had merely rejected their "genuineness" claim then I am satisfied that would amount to an error in law but in assessing the sponsor's and first-named appellant's credibility I am satisfied the First-tier Judge was entitled to consider all of the matters which led her to have concerns.
19. This was not a case where paternity was disputed. The respondent questioned the basis of the application namely whether this was a genuine spousal settlement application. Although permission to appeal was given I am satisfied the Judge was entitled to consider these matters as they went

to explain aspects of their relationship. The fact they remained married did not necessarily mean they were in a genuine and subsisting relationship and intended to live together as husband and wife.

20. I therefore find that Mr Pipe's submission that too much weight was attached to these factors has no basis. The Judge did not reject their relationship for these reasons but took them into account.
21. Those findings have to be considered against the evidence of contact. The sponsor claimed not to have seen his wife and children for over sixteen years as at the date of the application. The parties claimed they had been financially supported for many years and they had kept in touch by cards, phone calls and the internet. The Judge considered the evidence of phone calls and money transfers. She also considered the photographs and the internet conversations and she made findings on each aspect of their contact between paragraphs [16(6) and (8)] of her decision.
22. These documents show contact between the appellants and the sponsor and Mr Pipe submits that this evidence satisfied the test set out in Goudey.
23. However, in Goudey the Upper Tribunal made clear that a lack of corroborative evidence does not mean the claim should be rejected out of hand. Mr Pipe rightly pointed out that the VAF form contained the two telephone numbers relied on by the parties for contact. No one raised this at the hearing but this evidence in itself does not mean the first-named appellant's claim succeeds. The Tribunal in Goudey made clear at paragraph [11]-

"Everything else is neutral in this case. There is no evidence of lies, poor immigration history or deception. There is some evidence of financial sponsorship though the judge was entitled to be unimpressed by it for the reason he gave the absence of receipts is not a factor that goes to the discredit of the application."
24. In a case therefore where there is no evidence of lies, poor immigration history or deception then the parties would be entitled to the benefit of the doubt but where these issues are raised then the Judge is entitled to look at the evidence, or lack of it, more closely.
25. Whilst evidence was submitted the First-tier Judge was entitled to comment on its limited nature in circumstances where doubts over the marriage existed and the sponsor's own account were questionable. The sponsor's overstay and unlawful activities were factors she was entitled to have regard.
26. Mr Pipe's submission is that the First-tier Judge placed too much weight on adverse factors and too little weight on the documents submitted. However, the First-tier Judge was entitled to consider all of the available evidence and I am satisfied that the principles of Goudey were followed.
27. Mr Pipe argued that her approach in paragraph [16(9)] of her decision demonstrated an erroneous approach. Whilst some of her findings may have been speculative I am satisfied that the core findings, including the

finding that the sponsor displayed little interest in visiting his daughter in China if these applications failed, were open to her.

28. Mr Richardson submitted that the arguments presented by Mr Pipe amounted to a mere disagreement. Having carefully considered all of the evidence and taking into account the submissions I am drawn to the same conclusion.
29. There was no error of law in her approach to the decision under the Immigration Rules in respect of the First-named appellant and no separate grounds of appeal were raised under the Rules in respect of the second and third-named appellants. I accordingly find no error of law in respect of the Immigration Rules.
30. Mr Pipe accepted that if the first-named appellant failed under the Rules then the first-named appellant's article 8 claim would also fail as family life could not be engaged.
31. Mr Pipe did seek to rely, to a limited degree, on article 8 ECHR in respect of the two children.
32. The First-tier Judge considered article 8 outside of the Rules and I am satisfied that based on her previous findings, the conclusions she reached when considering proportionality were open to her. She concluded the second and third-named appellants had lived all their lives in China and had been cared for by their mother. The sponsor had played a limited role and she found it was not disproportionate to refuse them admission. At the date of decisions, the children were aged 17 and 16 years old respectively and whilst her assessment was brief I am satisfied her findings were open to her. There was no error of law in respect of the article 8 decision.

### **DECISION**

33. There was no error in law. I uphold Judge of the First-tier Tribunal Nixon's decision and I dismiss the appeals.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

### **TO THE RESPONDENT FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed:

Dated:

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Deputy Upper Tribunal Judge Alis