



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: HU/00933/2017
HU/00937/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19 April 2018

Decision Promulgated
On 17 May 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

ER CAO
ZHIYUN XIE
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms B Asanovic, Counsel instructed by K and G Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Background

1. This appeal comes before me following the grant of permission to the appellant by First-tier Tribunal Judge Brunnen on 8 February 2018 in respect of the determination of First-tier Tribunal Judge Freer who dismissed these joint appeals by way of a determination dated 10 August 2017.
2. The appellants are husband and wife and Chinese nationals born respectively in 1956 and 1950 who seek entry clearance to join their daughter as adult dependants.

3. Five criticisms are made of the determination. First, it is argued that the judge repeatedly referred to purported facts which had not been before him as part of the evidence and which had not been relied on by either party (such as the number of psychiatrists in China, mental health law, the nature and effects of medication, possible alternative medication and the dangers of allowing suicidal individuals on aeroplanes). Weblinks are provided from the judge's personal post-hearing research. The judge's personal research was attacked as being contrary to the principles of AM (Fair hearing) Sudan [2015] UKUT 00656.
4. Secondly, the judge made various findings on the first appellant's mental health problems and treatment that were not open to him to make in the absence of medical evidence. Reliance is placed on SP (Risk, Suicide, PTSD, IFA, Medical Facilities) Kosovo CG [2003] UKIAT 00017 where it was found that it was not the job of a judge to make clinical judgments. The third point made is that the judge considered the issue of mental health care in China of his own volition and without bringing it to the attention of the parties who had not discussed it. Fourthly, the judge found that the first appellant's ill health might expose his grandchildren to danger but failed to take account of the improvements in his mental state during past visits to his family here. Lastly, the judge's findings on the absence of suitable care in China are argued to have been made without consideration of all relevant factors.

Appeal hearing

5. At the hearing before me the parties were in agreement that the judge had materially erred in law. Mr Wilding conceded that the respondent could not resist the grounds put forward. In the circumstances, and finding myself in agreement with the appellants' criticisms of the judge I indicated that I would be setting aside the judge's determination in its entirety and remitting it to another judge of the First-tier Tribunal to re-make the decision. I now give my reasons.

Findings and Conclusions

6. I am grateful to both sides for their realistic approach. This is, unfortunately, a case where the judge fell into serious error in the several ways identified in the grounds. They are summarised above and I need not repeat them here. Suffice to say, the judge erred in undertaking his own post hearing research which was not shared with the parties and to which they were not afforded any opportunity to respond. This is a practice which is inexcusable and against which the courts have repeatedly advised.
7. The judge also erred in substituting his own views on the first appellant's medication and treatment when he, not being a medical professional, was in no position to do so. Similarly, his findings on the appellant's behaviour, dangers

of being with his grandchildren and of flying with other passengers were made without any supporting medical evidence. It was not for the judge to undertake his own research or to make, what amounts to, medical findings.

8. These are serious errors and they are material because they affected the outcome of the appeal. The only option I have in the circumstances is to set aside the entire determination and remit it for re-hearing to another First-tier Tribunal Judge. No findings are preserved.

Decision

9. The First-tier Tribunal Judge made errors of law such that his decision must be set aside and re-made by another judge of that Tribunal at a future date.

Directions

10. No later than five working days prior to the resumed hearing, the parties are to serve a skeleton argument.
11. The appellant is to notify the Tribunal and the respondent forthwith as to whether it is intended to call oral evidence. If evidence is to be called, full statements of all witnesses must be filed no later than five working days prior to the hearing. Any other documentary evidence relied on and which has not already been submitted must also be filed within the same time frame.
12. A hearing time of 2 ½ hours shall be allocated. If either party considers that additional time is required, the Tribunal must be informed of the amended time estimate (with reasons) within five days of the receipt of this determination.

Signed:



**Dr R Kekić
Judge of the Upper Tribunal
23 April 2018**