



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/01827/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

On 10 April 2018

**Decision and Reasons
Promulgated**

On 13 April 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HENG LI

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer
For the Respondent: Mr B Price, of Latta & Co, Solicitors

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. The SSHD appeals against a decision by First-tier Tribunal Judge Clough, promulgated on 5 July 2017, allowing the appellant's appeal "under article 8".
3. The grounds of appeal to the UT are attached to the SSHD's application dated 13 July 2017. In short, they are that:

(1) in basing her decision on the appellant having been in the UK lawfully, the judge overlooked that little weight was to be given to family life formed while his status was precarious; and

- (2) the judge failed to explain why the appellant should not be expected to comply with rules requiring him to apply for leave from outside the UK.
4. By an application dated 9 April 2018 the SSHD seeks the admission of new evidence, to show that the appellant's status in the UK has not always been lawful; that his immigration history includes an admission of attempting to obtain leave by deception; and that he must have known the position was contrary to submissions made on his behalf in the FtT. This is said to show mistake of fact such as to amount to error of law. There is an accompanying application to amend the grounds of appeal to the UT.
 5. Mr Price opposed the admission of the new evidence, on the grounds that it came very late.
 6. I found it clear that the FtT was mistaken as to the state of the objective facts of the immigration history.
 7. The mistake was material. The FtT's decision is based to a large extent on the appellant's status in the UK having "always been lawful, either with a valid visa, while appealing the refusal of leave [or] awaiting a decision" (paragraph 22).
 8. The evidence could and should have been provided by the SSHD to the FtT. As Mr Price pointed out, it is not even mentioned in the original grounds of appeal to the UT.
 9. The appellant in his statements dated 3 November 2014 (FtT first bundle, item 3; respondent's bundle, page C1) and 12 April 2017 (FtT second bundle, item 1) misled the FtT into taking the facts to be other than as they were. (The responsibility lies with him and not with his representatives, who were not acting for him at earlier stages of his immigration history).
 10. Notwithstanding that the SSHD might have brought this to light much earlier, the appellant cannot as a matter of principle be allowed to profit from misleading the FtT.
 11. I allowed the new evidence to be admitted and the grounds to be amended.
 12. Once that stage was reached, the decision had to be set aside. There was no argument open to Mr Price to the contrary.
 13. (The same stage might have been reached, even without the fresh evidence. The immigration history set out in the SSHD's decision is not the full one, but it does not support the appellant's assertions in his statements; and the decision goes on to hold that the appellant does not meet eligibility requirements for reasons which include being in the UK with no leave and in breach of the rules, at page 3 of 8. The judge appears to have accepted the appellant's evidence at face value without reference to those matters.)
 14. The decision of the FtT is **set aside**. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for a fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Clough.
 15. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

10 April 2018
Upper Tribunal Judge Macleman