



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

Appeal Number: HU/23299/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 May 2019**

**Decision & Reasons Promulgated
On 10 December 2019**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MISS HUALING WANG
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the appellant: Mr A Barnfield of Counsel

For the respondent: Ms A Everett, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of China born on 13 August 1979, appealed to the First-tier Tribunal against the decision of the respondent dated 2 November 2018 refusing her leave to remain in the United Kingdom as a partner of a British citizen.
2. First-tier Tribunal Judge Grimmatt dismissed the appellant's appeal in a decision dated 28 January 2019 under the immigration rules and under Article 8 of the European Convention on Human Rights.

3. Permission to appeal was granted by Deputy Judge of the Upper Tribunal AM Black in a decision dated 16 April 2019 stating that the Judge of the first-tier Tribunal may have arguably erred by stating that the burden of proof is upon the appellant, which is not correct and far as S-LTR. 1. 6 is concerned and furthermore the Judge does not appear to have directed herself as to the correct test for assessing dishonesty.
4. The first-tier Tribunal Judge Grimmett found the following: the appellant does not meet the suitability requirements because although the appellant said she had no convictions in her application, she had been convicted and imprisoned for 10 weeks in June 2007 for failing to produce an immigration document. On 25 September 2012, she was arrested and cautioned on suspicion of running a brothel.
5. The Judge did not believe the appellant's explanation that she was not aware of the police caution or that she had received one. The Judge noted that one of the questions the appellant was asked in the application form was whether she had ever been convicted of any criminal offences in the United Kingdom or any other country to which she answered "no". The Judge was satisfied that the appellant had been dishonest in her application form which she submitted to the respondent. The Judge found that the appellant does not meet the suitability requirements of the immigration rules in light of her previous immigration history and she does not meet the eligibility requirements as she has never had leave to remain in the United Kingdom.
6. The Judge found that the appellant's exclusion from the United Kingdom will lead to a separation from her British citizen partner and her partner's son but it would be for the appellant's partner to decide whether he wishes to remain in the United Kingdom or join the appellant in China. At paragraph 19 the Judge found that there are no exceptional circumstances in the appeal because the appellant came to the United Kingdom without leave and she has been imprisoned and cautioned in the United Kingdom.
7. The grounds of appeal argue that the Judge did not have the evidence of the police caution which it was incumbent on the respondent to produce when alleging dishonesty. There is some merit in this argument because the police caution was not produced by the respondent. However the appellant failed to mention in her application form that she had been convicted and imprisoned for 10 weeks in June 2007 for failing to produce an immigration document. Therefore whether or not the police caution was produced by the respondent is not material because the appellant failed to mention her conviction of 2007 in her application form. The Judge gave adequate reasons for finding that the appellant had lied about the conviction.
8. The respondent refused the appellant's application under S - LTR. 1. 6 which is a mandatory ground for refusal. I find that there is no material error of law in respect of the immigration rules.

9. In respect of Article 8 of the European Convention on Human Rights, the Judge stated that “the appellant has no right to be in the United Kingdom and it is for them (the appellant and her partner) to decide how to continue their future family lives”. I find that the Judge who did not specifically mention section 117B(4) of the Nationality, Immigration and Asylum Act 2002 (as amended), made her decision in accordance with it.
10. Section 117B(4) states that little weight should be given to a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully. By virtue of section 117D a “qualifying partner” means a partner who— (a) is a British citizen, or (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971).
11. In doing so, the Tribunal should give appropriate weight to the Secretary of State’s policy, expressed in the rules and instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of immigration laws, only where there are “insurmountable obstacles” or “exceptional circumstances” as defined. The critical issue will generally be whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the Article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control.
12. I find that there is no material error of law in the decision of the First-tier Tribunal in respect of Article 8 and a differently constituted Tribunal would not come to a different conclusion on the facts in this appeal. The appellant’s partner’s son lives with his mother and therefore his best interests will be preserved. The Judge found that it would be for the appellant’s partner to decide whether he wants to relocate to China with the appellant and there is no material error of law in her reasoning and conclusion.

Decision

13. I dismiss the appellant’s appeal

Signed by

A Deputy Judge of the Upper Tribunal
Mrs S Chana

Dated this 9th day of December 2019