



IAC-BH-PMP-V1

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

Appeal Numbers: AA/04847/2014
AA/04848/2014

THE IMMIGRATION ACTS

Heard at Bennett House,
Stoke-on-Trent
On 10th November 2014

Decision & Reasons Promulgated
On 10th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**MRS YUMEI CHEN
MISS JOANNA CHEN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Lane instructed by Braitch RB Solicitors
For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants, who are Chinese nationals, are mother and daughter. The first Appellant was born on 4th May 1985 and the second Appellant was born in the United Kingdom on 27th January 2014. The second Appellant is dependent upon her mother's appeal. In the remainder of this determination

I propose to refer to the first Appellant as “the Appellant” unless the context requires otherwise.

2. The Appellant’s immigration history shows that she made a claim for asylum in Ireland before travelling to the United Kingdom to be reunited with her husband, Mr Jin Pin Cheng, who is also a Chinese citizen. It appears that Mr Cheng made a claim for asylum in the United Kingdom but his claim was refused and he has remained in the United Kingdom without leave as a failed asylum seeker.
3. On 4th July 2014 removal directions were given for the Appellants to be removed from the United Kingdom to Ireland on 29th July 2014. The notice stated that the decision was not one against which there was a right of appeal. On 7th April 2014 the Respondent’s representative sent a letter to the Appellant giving the reasons for the removal decision. The letter contained a third country certificate. On 11th July 2014 the Respondent’s representative signed a further notice of immigration decision stating that the Appellant had a right of appeal but one which could only be exercised after she had left the United Kingdom.
4. On 30th June 2014 the Appellants’ solicitors sent a letter before action to the Judicial Review Unit of the Home Office. On 15th July 2014 the solicitors submitted Notices of Appeal together with Grounds of Appeal on behalf of the Appellants. The accompanying letter requested the First-tier Tribunal to confirm jurisdiction in respect of the appeal.
5. It appears that on 21st July 2014 the Respondent also made a decision certifying that the Appellant’s human rights claim was clearly unfounded. A copy of that letter is before me.
6. The matter came before Judge of the First-tier Tribunal V A Osborne on 31st July 2014. Both parties were represented. Judge Osborne determined the issue of validity and concluded that the First-tier Tribunal had no jurisdiction to hear an appeal. The only remedy open to the Appellant was by way of judicial review. It would appear that the letter dated 21st July 2014, to which I have referred above, was not included in the bundle of documents before Judge Osborne since there is no reference to it in the determination. The judge issued a decision stating that there was no valid appeal.
7. The Appellants’ representatives applied for permission to appeal to the Upper Tribunal and permission was granted in the First-tier Tribunal by Designated Judge McCarthy on 8th September 2014.
8. The application for permission to appeal was submitted by the Appellants’ representatives but was five days out of time. It is apparent from the application form IAFT-4 that no reasons were given to explain why the application was made late and there was no application for an extension of time. Nevertheless, Designated Judge McCarthy addressed the issue of lateness at paragraph 5 of his reasons for decision to grant permission. The judge stated that although unexplained lateness would usually lead to a decision that the application should not be admitted, in this case the interest

of justice required time to be extended as to do otherwise would prevent the Appellants from being able to exercise their rights of appeal. With due respect, it seems to me that this is a consideration which would apply to every out of time application which, apart from timeliness, had arguable merit.

9. That is the background against which the matter came before me in the Upper Tribunal on 10th November 2014. Representation was as mentioned above. I had before me all the documents which were before the First-tier Tribunal. In addition, I had two appeal bundles submitted by the Appellants' representatives, a skeleton argument by Mr Lane and a copy of the judgment of the Court of Appeal in The Queen on the Application of AM (Somalia) and SSHD [2009] EWCA Civ 114.
10. After hearing submissions from both representatives I reserved my decision which I now give.
11. Mr Lane adopted his skeleton argument dated 7th November 2014 which he amplified in oral submissions. After setting out the chronology, which I have attempted to summarise above, Mr Lane's main submission was that Judge Osborne erred in law and that the appeals should be allowed and remitted to the First-tier Tribunal to be heard substantively on human rights grounds. Reliance was placed on the decision of the Court of Appeal in AM (Somalia) which, Mr Lane submitted, is closely analogous to the present appeal.
12. Reference is made to a Rule 24 response submitted by the Respondent's representative on 17th September 2014. This states that the writer of the response did not have access to the file. However, Home Office electronic records make no mention of any human rights claim that had been made, and therefore it was not clear that the First-tier Judge erred in finding that he [sic] had no jurisdiction to entertain an in-country right of appeal.
13. Mr Lane submitted that there was a right of appeal which was validly exercised and brought before the Respondent issued the "clearly unfounded" certificate in respect of the Appellant's human rights claim on 21st July 2014. Therefore, it is submitted that the First-tier Judge made a material error of law in holding that there was no valid appeal. Mr Lane submitted that the appeal should be allowed and remitted to the First-tier Tribunal for substantive consideration as mentioned above.
14. For the Respondent, Miss Johnstone argued that there were two separate claims. A claim for asylum had been made initially and then on 30th June 2014 a human rights claim was made after the asylum claim had been certified by the Respondent on 7th April 2014. Miss Johnstone pointed out that human rights issues were not raised in the original claim. Mr Cheng, the father/husband of the Appellants, is a failed asylum seeker with no right to be in the United Kingdom. Therefore, there could be no prospect of success on human rights grounds.
15. Given that the asylum claim has been certified as manifestly unfounded, and the family member whom the Appellant and her child came to the

United Kingdom to join is himself a failed asylum seeker without status in the United Kingdom, it is difficult to see how there can be any arguable merit in a human rights appeal. For those reasons I uphold the First-tier Tribunal's decision and dismiss this appeal.

No anonymity direction is made.

Signed

Date 10th December 2014

Deputy Upper Tribunal Judge Coates