



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

Appeal Number: AA/07498/2014

**THE IMMIGRATION ACTS**

**Heard at Eagle Building, Glasgow**

**Decision and Reasons  
Promulgated**

**On 02 September 2015**

**On 6 October 2015**

**Before**

**The President, The Hon. Mr Justice McCloskey  
Upper Tribunal Judge Macleman**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR HUA DI LIN**

Respondent

**Representation:**

Appellant: Ms Saddiq, Senior Home Office Presenting Officer

Respondent: Mr Winter, of Counsel, instructed by Katani and Company Solicitors

**DECISION AND REASONS**

1. For convenience we annex to this decision a copy of the grant of permission to appeal dated 04 December 2014. We refer particularly to [3] thereof.
2. Upon the hearing of the Secretary of State's appeal, it was acknowledged by Mr Winter, Counsel for the Respondent, that the

criticism enshrined in [3] of the grant of permission to appeal is, in substance, well made, not least because at the time of the determination of the First-tier Tribunal (the "FtT") there was in fact no outstanding determination of any application or representations to the Secretary of State differing from or other than the appeal to the FtT itself. As a result, the premise upon which the FtT purported to allow the appeal, in [20], was non-existent. Given this concession, we ordered that the decision of the FtT be set aside.

3. We proceeded to remake the decision. In submissions, Mr Winter reiterated the concession mentioned above and did not formulate any further argument.
4. In pronouncing our decision, we held that since it is common case that there will be no separation of decision making and associated fragmentation, however temporary, of the three members of the family unit, the correct analysis must be that the impugned decision of the Secretary of State, contained in the letter dated 15 September 2014, does not interfere with the right to respect for family life enjoyed by any of those concerned as the family unit will remain intact.. Since there will be no interference, no further Article 8 analysis is required. We would add that in any event the legitimate aims in play are not contentious and, even on the incorrect hypothesis upon which the FtT proceeded, the proportionality of the impugned decision is beyond plausible dispute.

## **DECISION**

5. Thus we decide as follows:
  - (a) The decision of the FtT is set aside.
  - (b) We remake such decision by dismissing the Appellant's appeal.

*Seamus McCloskey*

**THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER**

**Date: 03 September 2015**

**ANNEX**



**In the First-tier Tribunal  
(Immigration and Asylum Chamber)**

Case No: AA/07498/2014

Decision by: First-tier Tribunal Judge Frances

In the matter of an application for permission to appeal

Appellant's name: HUA DI LIN

Application by Respondent

Permission to appeal is granted

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**REASONS FOR DECISION (including any decision on extending time)**

1. In a determination dated 11<sup>th</sup> November 2014, First-tier Tribunal Judge Watters allowed the Appellant's appeal against the Respondent's decision dated 15<sup>th</sup> September 2014 to remove him as an illegal entrant having refused his asylum claim. The Judge allowed the appeal on Article 8 grounds, but only to the extent that it was remitted to the Respondent to determine the appropriate period of leave to be granted in light of the procedure in the case of the Appellant's wife.

2. The grounds submit that the Judge misdirected himself in law by allowing the appeal to a limited extent to await the outcome of his wife's fresh claim. Further, the Judge failed to give adequate reasons for finding that it would be unjustifiably harsh to remove the Appellant due to his wife's outstanding application, given that his wife has no lawful status in the UK and is a Chinese national.

3. It is arguable that the Judge has no power to remit the matter to the Respondent. The Judge dismissed the Appellant's appeal on all grounds and found that his removal would be proportionate. The Judge did not find that the decision to remove was 'not in accordance with the law' and therefore it is arguable that he erred in law in allowing the appeal under Article 8. The grounds are arguable.

Signed

A handwritten signature in black ink, appearing to read 'Frances'.

Judge of the First-tier Tribunal

Date: 4 December 2014