



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/15026/2014  
& IA/15033/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 24 March 2015

Determination Promulgated  
On 25 March 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Zeying Cao  
Yuchan Yang

[No anonymity direction made]

Appellants

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant:

Ms L Mair, instructed by Chung & Co

For the respondent:

Ms C Johnstone, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. These are the linked appeals of the appellants against the determination of First-tier Tribunal Judge Edwards promulgated 10.7.14, allowing their appeals on article 8 grounds against the decisions of the respondent to refuse their applications for leave to remain in the UK. The Judge heard the appeal on 4.7.14.

2. First-tier Tribunal Judge Molloy refused permission to appeal on 7.10.14 but when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Grubb granted permission to appeal on 12.1.15.
3. Thus the matter came before me on 24.3.15 as an appeal in the Upper Tribunal.
4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Edwards should be set aside.
5. Whilst issue is taken with the way in which Judge Edwards addressed the medical evidence, there is no merit in this ground of appeal since the appeals were allowed. Despite concerns about the medical evidence, set out in the decision, Judge Edwards found that on the basis of their health it would be disproportionate to remove them from the UK, stating at §28 that, “there are two, prima facie, very unwell individuals who, in my judgement could not face a long-haul flight to PRC, and live without assistance.” Any alleged error made no difference to the outcome of the appeal.
6. At the heart of the appeal to the Upper Tribunal and the reason why permission was ultimately granted is the direction made by Judge Edwards at §32 of the decision:
  - (a) “I direct that leave be granted to both appellants for a period not exceeding twelve months. If at the end thereof, applications for further leave are made, it should not be granted without comprehensive reports touching the mental and physical health of both appellants being submitted from independent psychiatrists and geriatricians.”
7. In granting permission to appeal Judge Grubb found that the grounds raised an important point about the scope of a direction made under section 87(1) of the 2002 Act, “in particular whether a judge can ‘tie the hands’ of the Secretary of State in making any further grant of leave beyond that contemplated by the Tribunal’s decision itself. That is arguably an inappropriate rider to impose on a direction even if, which I consider to be the case, the directed period of grant of leave is less susceptible to challenge on appeal. For these reasons, permission to appeal is granted.”
8. Ms Mair submitted that the evidence before the Tribunal did not merit either limitation, as the medical evidence demonstrated a deteriorating condition of the elder appellants who both suffer from dementia and have severe and deteriorating memory problems. I note that in the First-tier Tribunal appeal the appellants were unable to follow proceedings, their contribution was irrelevant, and they accepted the invitation to return to the waiting room. Similarly, in the hearing before me, they sat with eyes closed and gave every appearance of being unaware of their surroundings, with the male appellant making occasional outbursts.
9. The parties agreed that in circumstances where an appeal has been allowed on the basis of article 8 ECHR, the Secretary of State would normally grant discretionary leave for a period of 2.5 years. In fact, following the direction, on 14.11.14 the Secretary of State decided to grant limited leave to remain for a period of 12 months, until 14.12.15. I also note that the Secretary of State did not seek to appeal the decision.

10. By section 87(1), now repealed, it is provided that if the Tribunal allows an appeal... "it may give a direction for the purpose of giving effect to its decision." That direction is part of the decision of the Tribunal and can be the subject of appeal.
11. The First-tier Tribunal Judge was entitled to make a direction. The question arises whether the direction given, first as to length of leave, and second as to what evidence should be submitted before a further application for leave can be granted, can properly be said to be for the purpose of giving effect to its decision. For the reasons set out herein, I am not satisfied that it was either necessary or appropriate for the purpose of giving effect to the decision.
12. The Rule 24 response of the Secretary of State and as confirmed by Ms Johnstone is that it is a matter for the Secretary of State to decide what period of discretionary leave to grant. It was not necessary for Judge Edwards to make any direction as to the length of leave to be granted. It is obvious that the limitation in the direction given by Judge Edwards reflected his dissatisfaction with the medical evidence. The judge could, however, have made observation within the body of the decision to similar effect, suggesting, for example, that in light of the unsatisfactory medical evidence the Secretary of State may consider granting only a short period of discretionary leave.
13. I can see no rational link between the limitation of a specific period of 12 months and the medical evidence. None of that evidence suggested that the medical and mental condition of the appellants was likely to improve in the near future. On the facts of this case, even if the judge was entitled to make such a direction as to length of leave, which I doubt, there was no rational justification for imposing a period of 12 months.
14. Further, I find no necessity or justification for the second part of the direction, as to what evidence should be produced before any further application for leave to remain could be granted. That, surely, is going far beyond the ambit of the Tribunal in allowing the appeal and was not needed for the purpose of giving effect to the decision.
15. In the circumstances, I find that there was an error of law in the decision of the First-tier Tribunal such that it should be set aside and remade, by removing the direction altogether.
16. Ms Mair submitted that in remaking the decision I should make a direction that the grant of 12 months discretionary leave should be withdrawn by the Secretary of State and replaced with the 'standard' grant of leave of 2.5 years. For the very same reasons as I have found it was an error of law in the First-tier Tribunal, I do not make any such direction. It is for the Secretary of State to exercise her discretion as to the length of leave. There are remedies available to the appellants if they consider that discretion has been exercised unreasonably, but it is not a matter that is properly before me in this appeal.

### **Conclusion & Decision:**

17. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside, preserving the findings and conclusions of the decision.

I set aside the decision.

I re-make the decision in the appeal by allowing it on human rights grounds, but deleting the direction at §32 of the decision of the First-tier Tribunal.



Signed:

Date: 24 March 2015

Deputy Upper Tribunal Judge Pickup

### **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

### **Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: Whilst the appeal had been allowed, Judge Edwards considered that no fee award was justified because of the poor quality of the medical evidence.



Signed:

Date: 24 March 2015

Deputy Upper Tribunal Judge Pickup