



IAC-AH-DH-V1

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

Appeal Number: OA/06166/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 25 August 2015**

**Decision & Reasons Promulgated  
On 12 May 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**XIUMEI LIN  
(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

**THE ENTRY CLEARANCE OFFICER - BEIJING**

**Respondent**

**Representation:**

For the Appellant: Mr P Harris, instructed by Chancery Partnership  
For the Respondent: Ms R Pettersen, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Xiumei Lin, born on 26 October 1977 is a female citizen of China. It is accepted that she is the wife of a British citizen, Zhongqun Shi (the sponsor). She applied for entry clearance to the United Kingdom as the sponsor's partner under

Appendix FM of HC 395 (as amended). By a decision dated 10 April 2014, she was refused entry clearance by the Entry Clearance Officer (Beijing) under Section EC-P of Appendix FM. The appellant appealed to the First-tier Tribunal (Judge Morris) which considered the appeal on the papers and without a hearing. That appeal was dismissed in a decision promulgated on 26 March 2015. The appellant now appeals, with permission, to the Upper Tribunal.

2. The application was refused under paragraph EC-P1.1(c) on the basis that a deposit certificate from the Bank of China provided with the application was not a genuine document. There was no refusal of entry clearance under paragraph 320. The judge noted that the appellant had remained living in Japan for seven years without permission to be in that country and took that fact into account, as had the ECO in the original refusal. In light of what appeared to be an unreliable deposit certificate, the judge found that the appellant and sponsor did not meet the savings requirements (£62,500) nor the income requirement (£18,600 per annum) provided for by Appendix FM. The judge observed [18] that the burden of proof in the appeal was on the appellant save in relation to the allegations regarding the deposit certificate. The judge was satisfied that the deposit certificate was not a genuine document. He relied upon a document verification report (DVR). This document is the product of enquiries made of a Ms Zhea, an officer of the Bank of China, Fuqing Branch. Ms Zhea confirmed that the sums of money which the deposit certificate indicated were held in the appellant's name did indeed "match those in [Bank of China's] system." However, security features were not evident such as a UV reaction to the "Bank of China" heading and logo and the serial number on the document should have been in relief.
3. The appellant has pointed out that, in Counsel's skeleton argument to the First-tier Tribunal, it had been clearly submitted that the copy of the bank document which had been sent by the respondent to the Bank of China was a scanned copy and not the original document. In the circumstances, it was hardly surprising that a scanned document did not reveal a watermark under UV light or, indeed, bear a serial number in relief. Judge Morris states [18] he had taken fully into account the "forceful submissions" made by the appellant in the skeleton argument of her representatives but, apparently for the same reasons provided in the DVR, found the document to be false. I find that the judge has failed to engage properly with the arguments put forward by the appellant. In essence, the appellant argued that the observations of the Bank of China official were entirely accurate but were not surprising given that the document that she had been asked to consider was not an original but a photocopy of an original. Significantly, the sums of money which the certificate indicated were in the appellant's account were confirmed by the Bank of China. I find that the judge should have engaged properly with these submissions although I do acknowledge that this can be difficult when an appeal is decided on the papers without a hearing. The judge has simply not engaged with the appellant's arguments but has assumed [20] that the document was false and that this fact (as he found it) coupled with the appellant's immigration problems in Japan led him to find that the relationship between the appellant and sponsor was not genuine or subsisting. The judge was in no position, in the light of the appellant's submissions,

simply to assume that the document submitted by the appellant was false. He should have engaged with the acknowledged fact that it was a photocopy and not an original. Under the circumstances, I set aside the First-tier Tribunal decision and have re-made the decision.

4. Having considered the documents in the respondent's bundle, it is clear that the deposit certificate was a scanned and not an original document. Applying the standard of the balance of probabilities, I find that the DVR does not undermine the appellant's contention that the deposit certificate is a genuine document; the reasons outlined in the DVR which led the ECO to reject the genuineness of the document can be explained by the reason of the fact that the document considered by the Bank of China was not an original document. As I have said, it is particularly significant that the Bank did not dispute the appellant's claimed deposit holdings; had that not been the case, the appellant's submission that the deposit certificate was a copy may not have assisted her at all. If one accepts that the deposit certificate is genuine, it is clear that the savings threshold required under the Immigration Rules has been met by the appellant. The birth of the appellant's and sponsor's child obviously postdates the ECO's decision but, considering the evidence which was before the ECO and having proper regard to the immigration difficulties encountered by the appellant in Japan, I find that the appellant and sponsor have been and continue to be engaged in a genuine and subsisting relationship and that they intend to live permanently together in the United Kingdom. In the light of that finding, together with my finding as regards the financial requirements, I have re-made the decision by allowing the appeal against the ECO's decision dated 10 April 2014.

### **Notice of Decision**

The decision of the First-tier Tribunal promulgated on 26 March 2015 is set aside. None of the findings of fact shall stand. I have re-made the decision in the Upper Tribunal. The appellant's appeal against the decision of the Entry Clearance Officer dated 10 April 2014 is allowed under the Immigration Rules.

No anonymity direction is made.

Signed

Date 20 October 2015

Upper Tribunal Judge Clive Lane