



IAC-AH-DH-V1

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

Appeal Number: OA/09054/2014

**THE IMMIGRATION ACTS**

<b>Heard at Birmingham On 16<sup>th</sup> March 2016</b>	<b>City Centre Tower,</b>	<b>Decision &amp; Promulgated On 18<sup>th</sup> April 2016</b>	<b>Reasons</b>
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**JIABIN RUAN**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER - BEIJING**

Respondent

**Representation:**

For the Appellant: Ms A White, Counsel instructed by Ian Henery Solicitors  
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a citizen of the Peoples Republic of China born on 22<sup>nd</sup> June 1996. The Appellant applied on 6<sup>th</sup> June 2014, when he was still not quite 18 years of age, for entry clearance as the dependent child of his mother, the Sponsor Ya Mei Chen. That application was refused for the reasons given in a Notice of Decision dated 8<sup>th</sup> May 2014. The refusal was

confirmed on review by an Entry Clearance Manager on 5<sup>th</sup> January 2015. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Kershaw (the Judge) sitting at Birmingham on 30<sup>th</sup> March 2015. He dismissed the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 5<sup>th</sup> April 2015. The Appellant sought leave to appeal that decision, and on 7<sup>th</sup> July 2015 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The circumstances of the Appellant's family are that his father has been resident in the UK since 2000 but it was not in dispute that at the date of decision he was not settled in the UK. The Appellant's mother, the Sponsor, came to the UK in 2003 when the Appellant was just 7 years of age. She was granted indefinite leave to remain in May 2010 and is therefore settled in the UK. The Appellant has a brother, [SR] born on [ ] 2007, and a sister, [CR] born on [ ] 2008. They live with their parents in the UK and both are British citizens.
4. The Judge dismissed the appeal under the Immigration Rules because he was not satisfied that the Appellant could meet the requirements of paragraph 297(i)(e) and (f) of HC 395. He was not satisfied that the Sponsor had had the sole responsibility for the care of the Appellant because whilst the Appellant had lived in China first with his grandmother and then with his uncle, the Sponsor had not abdicated her responsibility for the care and upbringing of the Appellant, but had shared that responsibility with her husband. The Judge treated the best interests of the Appellant as a primary consideration, but was not satisfied that there were serious and compelling family or other considerations which made the Appellant's exclusion undesirable. Finally, as regards Article 8 ECHR, the Judge found that there was family life between the Appellant and his parents which would be interfered with by the Respondent's decision to such a degree of gravity as to engage the Appellant's Article 8 rights, but that such interference was proportionate.
5. At the hearing, Ms White argued that the Judge had erred in law in coming to these conclusions. She referred to the grounds of application and argued that in considering paragraph 297, the Judge had failed to take into account the purpose of family union as required by the decision in **TD (Yemen) [2006] UKAIT 00049**. The Judge had also failed to take into account the best interests of all the children of this family. He had only considered those of the Appellant and not those of his siblings. The Appellant's siblings had hardly been mentioned at all. They had been denied the opportunity to live with and form a relationship with their elder brother. The Judge had also failed to consider why the Appellant had not attempted to join his parents before and why they had not seen each

other since 2003. The financial reason given by the Sponsor was recorded at paragraph 36 of the Decision.

6. As regards Article 8 ECHR, Ms White submitted that the Judge had erred in law by failing to take into account all of the relevant factors. Again he had not considered the best interests of the other children of the family.
7. In response, Mr Whitwell referred to the Rule 24 response and argued that there had been no such errors of law. Regardless of the purpose of the relevant Immigration Rule, the fact of the matter was that the Appellant's application failed to satisfy the requirements of paragraph 297. The Appellant had applied for entry clearance about one month before his 18<sup>th</sup> birthday at a time when he had enjoyed comfortable circumstances in China and there had been no need for him to leave that country.
8. Finally, Mr Whitwell submitted that the Judge's proportionality decision could not be criticised. He had found that it was in the Appellant's best interest to remain living in China as opposed to joining his parents and siblings in the UK whom he had not lived with or even seen for many years.
9. I find no material error of law in the decision of the Judge which I therefore do not set aside. The facts in this appeal were not disputed, and the Judge applied them correctly to the requirements of paragraphs 297(i)(e) and (f) of HC 395. His decision that the Sponsor had shared the responsibility for the care and upbringing of the Appellant with her husband cannot be faulted on the evidence before the Judge. There is considerable overlap between the consideration of serious and compelling family or other considerations for the purposes of paragraph 297(i)(f) and any consideration of proportionality. The Judge analysed carefully the circumstances of the Appellant and his family in this context and was entitled to come to the decision which he did. The purpose of paragraph 297 to encourage family unity is reflected in its requirements and as Mr Whitwell pointed out, the Appellant could not satisfy those requirements.
10. As regards Article 8 ECHR, the Judge demonstrated that he had carried out the balancing exercise necessary for any consideration of proportionality and again in my view he came to a conclusion which was open to him. It is true that when considering proportionality and also paragraph 297(i)(f), the Judge had scant regard for the best interests of the Appellant's siblings. However, if this does amount to an error of law, I find that it is not a material error. The decision of the Respondent denies the Appellant's siblings the chance to live and form a relationship with him but the Appellant's siblings have never met him, and there was no evidence before the Judge of any hardship they might have experienced as a consequence. It is impossible to find that such circumstances would outweigh the public interest represented by the fact that the Appellant could not meet the requirements of the relevant Immigration Rule.
11. For these reasons I find no error of law in the decision of the Judge.

**Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

The appeal to the Upper Tribunal is dismissed.

**Anonymity**

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and I find no reason to do so.

Signed

Date

Deputy Upper Tribunal Judge Renton