



**Upper Tribunal
(Immigration and Asylum Chamber)**
Number: IA/20770/2015

Appeal

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 10th May 2017**

**Decision & Reasons Promulgated
On: 19th May 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

**Huanming Yang
(no anonymity direction made)**

Respondent

**For the SSHD: Mr Harrison, Senior Home Office Presenting
Officer**

For the Respondent: Mr Ahmed, Counsel instructed by AGI Solicitors

DETERMINATION AND REASONS

1. The Respondent Ms Huanming is a national of China, born on the 20th November 1985. On the 31st August 2016 the First-tier Tribunal (Judge Chambers) allowed her appeal against a decision to refuse to grant her leave to remain on human rights grounds.

Background and Matters in Issue

2. The relevant history is that Ms Huanming arrived in the United Kingdom in December 2010 with leave to enter as a visitor. She did not leave at the end of the period stated by her, but remained in the country unlawfully. In December 2012 she met her partner, Mr Zi Man Chung; they were married on the 26th November 2013. In March 2015 she made an application to the Home Office in which she asked to be permitted to remain in the UK with Mr Chung.
3. The reasons for refusal letter is dated the 27th May 2015. The Respondent begins by accepting that Ms Huanming meets the definition of ‘partner’ within the meaning of Appendix FM. She then turns to consider whether she can meet the requirements of paragraph EX.1, and draws the following conclusions:

“You have a genuine and subsisting relationship with your British partner. Whilst it is acknowledged that your partner has lived in the UK all his life and is in employment here with his own business, this does not mean that you are unable to live together in China. Although relocating there together might cause a degree of hardship for your British partner, the Secretary of State has not seen any evidence that there are insurmountable obstacles in accordance with EX.2 preventing you from continuing your relationship in China. You therefore fail to fulfil EX.1(b) of Appendix FM of the Immigration Rules”.

The letter then rejects the claim on ‘private life’ grounds, and finds there to be no exceptional circumstances warranting a grant of leave ‘outside of the rules’.

4. When the appeal came before the First-tier Tribunal, both Ms Huanming and her husband gave live evidence. There was no appearance by the Secretary of State for the Home Department and so their evidence went unchallenged; Judge Chambers appeared satisfied that what they told him was all true. That was that Ms Huanming’s immediate family members are resident in the UK. Mr Chung has a thriving business in the UK, in the form of a successful takeaway. It is his sole means of livelihood. If he were to relocate to China he would have to close the business at great economic loss with little or no prospect of obtaining employment or re-establishing an alternative in China. The couple live in a home that Mr Chung owns. Although he is of Chinese origin he was born in this country and has only ever been to China for a holiday. He has no relatives in that country; nor does he speak Mandarin. He communicates with his wife in broken English and Cantonese. All of his close family live in this

country and are British nationals. Judge Chambers did not consider that Mr Chung's fear of losing his British nationality was justified, but did accept that he faced "economic ruin" if he had to leave the UK, and thereby abandon his business; that this was the sort of very serious hardship which would satisfy the exception. Having found the requirements of EX.1 to be met, it was not necessary for the Tribunal to consider the matter 'outside of the rules' and the appeal was allowed.

5. The Secretary of State for the Home Department has sought permission to appeal, that being granted by Upper Tribunal Judge Dr HH Storey on the 24th February 2017. Dr Storey considered it arguable that the First-tier Tribunal's approach to whether there were "insurmountable obstacles" was inconsistent with higher authority. Although the grant of permission does not identify a particular authority, before me the Secretary of State places reliance on the decision of the Supreme Court in R(Agyarko) v Secretary of State for the Home Department (FC) [2017] UKSC 11.
6. Mrs Agyarko had made her way to the Supreme Court by way of a failed appeal in the Court of Appeal against a decision of the Upper Tribunal to refuse to grant permission for judicial review¹. She had argued that in refusing permission the Tribunal had failed to recognise that the Secretary of State had imposed too high a threshold in respect of paragraph EX.1 of the Rules, and had failed to take relevant facts into account. This argument was rejected by both Court of Appeal and the Supreme Court, who held that the Secretary of State had applied the correct legal framework. Importantly for the purpose of this appeal, they also held that on the facts presented, neither Mrs Agyarko or her co-appellant Mrs Ikuga could possibly have established that there were insurmountable obstacles to their family life continuing abroad. What then were these facts?
7. Mrs Agyarko was a long-term overstayer of Ghanaian nationality. She had married a British citizen; they had no children. She however, had three children of her own (now adults), a sister and a mother living in Ghana. Her partner was British and had lived all his life in the UK. He was in employment here. The Secretary of State had accepted that there would be a degree of hardship for her husband going to live in Ghana (a country with which he had no connection) but that this did not meet the test in the rule. Mrs Ikuga was a Nigerian, also an overstayer. Her British husband was of Nigerian origin. She placed particular reliance upon the assertion that she was receiving medical treatment, including for infertility, in the UK which would have been disrupted if she were to leave. The Secretary of State had cast some doubt on whether she was actually living with her husband and found that the claimed medical problems were not in fact as serious as the

¹ Under the statutory scheme then in place she had no right of appeal against a decision to refuse to grant leave, no removal decision having been served.

application had indicated.

8. Mr Harrison for the Secretary of State for the Home Department submits that the only obstacle identified in this case was the fact that Mr Chung would lose his job; this he submitted was on all fours with the finding in Agyarko's case. Since Mr Chung could not be said to be more disadvantaged by the move than Mrs Agyarko's partner, it followed that the First-tier Tribunal must have erred in finding that there were insurmountable obstacles.
9. Mr Ahmed objected to this characterisation of the findings. The finding was not that this family would be "disadvantaged" by a move, but that Mr Chung would face "economic ruin", a qualitatively different matter. He pointed out that the factual matrix in Agyarko was strikingly different. Ms Agyarko had children of her own living in Ghana, as well as a mother and siblings. There was therefore an established network for her and her husband to return to. Set in this context the fact that he would lose his job was not particularly important. The facts in Ikuga had been in doubt; the central matters that lady had identified as presenting obstacles to her return had in effect been rejected.

My Findings

10. What this appeal illustrates is that in matters concerning Article 8, the individual facts are always of central importance.
11. The core finding of the Tribunal was that Mr Chung would face "economic ruin" if he were to abandon his business in the UK and move to a country with which he had only historical connections. Although the grounds of appeal assert that "new jobs could be found" this would appear to be a submission on the facts, rather than a reason why Judge Chambers erred in law in reaching the finding that he did. Mr Harrison was unable to point to any evidence to show that this was not a finding that had been open to the Tribunal. That is perhaps unsurprising since the Secretary of State did not attend the First-tier Tribunal hearing, and so did not have the advantage of hearing Mr Chung's credible evidence on the point. I am satisfied that there is a material difference between *ruin* and having to move jobs. Looking at the definition of "insurmountable obstacles" in EX.2, an elaboration of the test expressly endorsed by the Supreme Court, I am unable to agree that the First-tier Tribunal was irrational in reaching the finding that it did. The rule states that the term should be interpreted to mean:

"very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or

would entail very serious hardship for the applicant or their partner.”

12. I am satisfied that Judge Chambers was entitled to find that *ruin* would be a very significant difficulty which could not be overcome or that would entail very serious hardship for the applicant and/or her partner.
13. It follows that the Secretary of State for the Home Department’s appeal must be dismissed.

Decisions

14. The decision of the First-tier Tribunal contains no material error of law and it is upheld. The Secretary of State for the Home Department’s appeal is dismissed.
15. There is no direction for anonymity.

Upper Tribunal Judge Bruce
17th May 2017