



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

Appeal Numbers: HU/13072/2015

THE IMMIGRATION ACTS

Heard at Field House

On 31 January 2018

**Decision & Reasons
Promulgated
On 15 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - BEIJING

and

**GUANGYAO WU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: No appearance and unrepresented

For the Respondent: Ms A Everett, Senior Presenting Officer

DECISION AND REASONS

1. In this appeal the Appellant is called the Entry Clearance Officer (“the ECO”) and the Respondent is called the Claimant.
2. The Claimant, a national of the People’s Republic of China (PRC), date of birth 2 October 1996, appealed against the ECO’s decision to refuse entry clearance on human rights grounds. His appeal was also heard along with

that of his mother Qiaomei Yao. The matter came before First-tier Tribunal Judge K Swinnerton who on 15 May 2017 allowed their immigration appeals under the Rules, being satisfied that the Claimant had complied with the necessary requirements under the Immigration Rules.

3. Permission to appeal was given by First-tier Tribunal Judge Grant-Hutchinson on 19 October 2017. As a fact the ECO did not challenge the Judge's decision, albeit it was outside the Judge's powers, to allow the appeal of Mrs Yao (a national of the PRC, date of birth 10 February 1970).
4. It seems the reason no challenge was made to the decision in relation to Mrs Yao was quite simply that the Judge had made findings on the relevant issues of maintenance. Addressing Mrs Yao, the view had been taken that, pursuing the procedural point, that the appeal could not have been allowed under the Immigration Rules having regard to the amendments to Section 84 of the Nationality, Immigration and Asylum Act 2002. Nevertheless the point was raised which the Judge had wholly failed to appreciate namely that the Claimant was at the material time of the application over the age of 18 and was also over the age of 18 at the date of the ECO's decision. The Judge effectively recorded the relevant facts as to the Claimant's date of birth but the point was not picked up or addressed as to his ability to meet the requirements of the Rules bearing in mind he was over the relevant threshold age at the date of application (9 October 2015). That point was maintained against the Claimant by the ECO.
5. Notice of hearing on 31 January 2018 was sent to the Claimant's representatives Bloomsbury Law Solicitors, to the Sponsor Mr Zhiqiang Wu and to the Claimant at the last recorded address. On 30 January 2018 Bloomsbury Law on behalf of Mr Wu sought to withdraw the appeal but as the Tribunal pointed out the appeal was that of the ECO and not Mr Wu. Therefore it was not open to them to withdraw any appeal.
6. By an e-mail of 30 January 2018 the representatives also made a request that the case be listed in the afternoon of 31 January at 2pm.

7. Given their non-appearance at the hearing at 10am on 31 January 2018, enquiries made by the Tribunal staff and the Presenting Officer led to Bloomsbury Law sending a faxed letter to the Tribunal indicating that they did not intend to appear; they were without instructions and they would take no further part. Confirmation was also obtained that Counsel had not been instructed and would not be attending.
8. In the circumstances the Claimant having notice of the hearing did not communicate with the Tribunal, did not request an adjournment or indicate that he wished to appear but could not do so and no further evidence had been provided by the Claimant pursuant to the directions given concerning his claim and the Claimant was told in writing what might happen if the Tribunal was to find the error of law and to determine it in the absence of the Claimant or his representative.
9. I therefore have considered whether or not it was appropriate to proceed in the absence of the Claimant. I conclude in the light of the absence of any evidence of further involvement in the appeal process that there was nothing to indicate any unfairness in proceeding to deal with the Article 8 private/family life considerations that have arisen, I was fully satisfied the Claimant could not meet the requirements of the Immigration Rules pertinent to him because of his age at the material time.
10. I have therefore considered the evidence that was filed in the First-tier Tribunal which includes a statement from the Sponsor, a letter from Mrs Yao and a letter from the Claimant. The letter from Mrs Yao dated 20 March 2017 explained the strong feelings of love she feels towards her children, the circumstances in which she was left in the PRC, whilst her husband, the Sponsor, came to the United Kingdom to earn a living, her desire that her children should prosper and be in her and the Sponsor's company. There is very little description of that life but it seemed to me the natural position was that she had brought up the Claimant. He had gone to university and studied and that she said:

“My child is already grown up and facing graduation. We learned a long time ago that Britain has a better environment for education. We would like our son to advance his education in Britain, so he could pay back to his family and society. Dear Judge please would you kindly reconsider our case. I hope if you can empathise with the pain we have been suffering from long years of separation. Please give one chance to our child and to our family, a chance that allows our family to live together in Britain.”

11. The Claimant’s statement essentially explains the difficulties there had been for his father being absent and seeking to maintain a relationship with his family in the PRC. He said:

“... He fully understands my mother has made huge sacrifices for our family. Although thousands of miles away, I can never forget what my father has always taught me tirelessly: how to be a good person, pay respect to the teachers as well as keeping the Chinese tradition of respect for the old and love for the young. My father had been so insistent in urging me to study English so I am fully prepared for my future life in Britain.

My beloved mother, for years of enduring hardship, she tried to take on the roles of both father and mother to her two children, struggled to keep us fed and taken care of. I will treasure the love and care my parents have given me for the rest of my life. It was through the hard work of my father that our family was able to have enough food and clothing.

My father’s hard work of more than ten years eventually paid off in 2011, when he was finally granted a permanent residency in the UK. It was a great relief to my father. I was very proud of my father’s achievement because it meant my father showed initiative, worked hard and in compliance with the law during all his years in Britain. As soon as my father had obtained his rights to stay, he returned immediately to China to see us. Even though he only visited use a few

times, we understood the long journey between us and the huge costs associated with his visits each time. My father was not able to stay with us for very long due to his status. Every time my father had to leave us, my longing for the next reunion grew stronger.

My father has been actively trying to obtain my residence status in the UK since 2013, however the reality always hit me hard. Every refusal brings deep pain to our family. What we have been through is unbearable for ordinary people, from hope to despair and then seeking for hope again from despair. Fortunately, we have never given up hope despite having to bear the pain of family separation and we are still trying.

I am due to graduate this year and I would like to further my education in Britain to improve myself further. There is a saying in Chinese, describing one of the biggest regrets in life, which is: "The offspring wants to show his filial love with his parents but they are gone (dead)". As a caring son, my biggest fear would be if I have no chance to look after my parents before it is too late. My parents' greying hair and faces covered with wrinkles constantly reminds me that they are no longer youthful. This makes my decision even firmer that is to join my parents in Britain, accompany them and take good care of them. ... "

12. The statement from the Sponsor describes the existence of the marriage to Mrs Yao, his work and the role that she has played in bringing up the children, including the Claimant. He expressed his upset at being further separated from the Claimant and his desire to establish a permanent relationship through his son in the UK. The material is silent as to who is the other child sibling of the Claimant. The balance of the material in the Claimant's bundle was essentially some photographs which could have been taken at any time, they are undated, and they appear to include pictures of the Claimant, Mrs Yao, his father, and possibly his sister. I am unaware of the sister's circumstances.

13. In considering this matter outside of the Immigration Rules I apply the case law of Hesham Ali [2016] UKSC 60 and Agyarko [2017] UKSC 11. There is no threshold of exceptional circumstances but it is plain when the Rules do make provision and the Rules are in this case applicable to the circumstances of the case that it does not seem to me that there is anything about this case other than the fact that the Claimant has plainly had a close relationship with his mother Mrs Yao and that the effect of her coming to the United Kingdom would be an interference in that relationship.
14. It struck me that if the Claimant wished to come to the United Kingdom to study then it is open to him to make the appropriate application. I conclude from the description in the documents that have been provided with, that the relationship is plainly that of mother and son and it represented the perfectly normal relationship that one might expect. However whilst fully understanding his desire to remain with Mrs Yao and to be with his Sponsor father I do not find that those circumstances are in any sense unusual or indicate that this is an appropriate case where Article 8(1) family/private life rights are engaged in the sense that the ECO's decision is a material interference in that chosen relationship. If I was wrong in that view and Article 8 ECHR rights are engaged then I conclude that the interference is lawful and properly serves the immigration control purposes contemplated by Article 8(2) ECHR. Therefore looking at the brief evidence that I have as a whole concluded that it is appropriate to take into account Sections 117A and 117B of the Nationality, Immigration and Asylum Act 2002.
15. In that respect I take into account that the Claimant has been learning English, he would be supported in the United Kingdom and would not evidently be a burden on the taxpayer and he has the capacity to work, if he wishes to enjoy the fruits of a UK education that is a matter for him, and the potential cost to the taxpayer. I find the public interest is a matter which must be given significant weight in this case and quite simply choices that people make as to where they live and at whose expense is

not the basis on which it is shown that the decision is disproportionate. I conclude that the public interest is not outweighed by those of the Claimant. I conclude therefore that the ECO's decision is proportionate.

DECISION

The appeal of the ECO succeeds to the extent that the original Tribunal's decision cannot stand. The following decision is substituted. The appeal based on human rights grounds is dismissed.

ANONYMITY

No anonymity order was sought nor is one appropriate.

Signed

Date

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal of the Claimant on human rights grounds has been dismissed and therefore no fee award is appropriate.

Signed

Date

Deputy Upper Tribunal Judge Davey