



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

PA/03148/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
on 6 December 2018**

**Decision & Reasons Promulgated
on 17 December 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RUIQIN XUE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr N McCluskey, Advocate, instructed by LB & Co,
Solicitors, Glasgow

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The respondent's decision dated 6 February 2018, refusing the appellant's claim.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge McManus, promulgated on 11 May 2018.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 25 May 2018.

- (v) The grant of permission by Deputy UT Judge Chapman, dated 23 August 2018.
2. The first part of the grounds relates to refusal of an adjournment and to the appellant's husband being subject to a witness protection programme. Mr McCluskey advised that in light of information which has recently come to hand, those aspects were no longer pursued. (The grant of permission may not have extended to these issues, but that does not now need be taken any further.)
 3. The remaining grounds say that the judge erred under reference to paragraph EX.1 of the rules; there were insurmountable obstacles to the appellant and her husband returning to China; and in assessing article 8, given the length of time the appellant's husband had resided in the UK, the nature of his occupation, his level of income and the financial dependence of the appellant upon him it was "clearly not proportionate to expect him to return to China at this stage of his life".
 4. The numbering of the paragraphs in the FtT's decision has gone astray at several points. This determination needs to be related back to that decision, bearing that in mind.
 5. It was agreed during submissions that the word "not" in the first sentence of the second paragraph numbered 16 on page 14 is a typographical error.
 6. Mr McCluskey added to the grounds as follows:
 - (i) The article 8 assessment (at the paragraph referred to above) was inadequate, both under the rules and in terms of proportionality outside the rules.
 - (ii) In that paragraph, and elsewhere in the decision, the judge failed to allow for the degree of flexibility available in applying part 5A of the 2002 Act, as shown by *Rhuppiah* [2018] UKSC 58.
 - (iii) At page 13, paragraph 12, and in the paragraph referred to above, the judge over-emphasised the appellant's precarious immigration status.
 - (iv) At page 9, paragraph 6, the judge set out factors in the appellant's favour, which she failed to recognise later in the decision.
 - (v) The respondent's refusal letter had baldly refused to recognise that there might be any exceptional circumstances to permit the appeal to succeed outside the rules. Such questions were highly fact-sensitive. The judge had fallen into the same error of a non-analytical approach.
 - (vi) Based on the factors which were not properly recognised - the 20 years the appellant's husband has spent in the UK, and his business and property interests - and on the flexibility available, the decision should be reversed.
 7. Having heard also the submissions for the respondent, I reserved my decision.

8. *Rhuppiah* was an example of a case so strong on its individual (and unusual) facts that the Court considered it might have succeeded, outside the rules, on private life alone.
9. The immigration rules, including paragraph EX.1, are intended to comply with article 8 so far as possible. It has not been shown that the present case disclosed any feature of private or family life which is not reflected in the rules. Accordingly, everything relevant had already been considered, and no extensive treatment outside the rules was required.
10. The judge's decisive paragraph did not have to repeat everything which went before. It mentions positive factors (no indication of recourse to public funds, and no criminal record) as well as negative ones. The next paragraph is explicit that all factors mentioned in the decision have been considered.
11. The immigration history of the appellant was worse than the judge said, because, as Mr Govan pointed out, her status in the UK at relevant times was not simply precarious but unlawful. Part 5A at s.117B required little weight to be given both to her private life and to her relationship.
12. The grounds are not shown to be any more than disagreement with the judge's assessment of insurmountable obstacles, within the rules, and of proportionality, as to any further case outside the rules. That assessment was firmly grounded in the facts of the case, and discloses no error on a point of law, such that it should be set aside.
13. Page 9, paragraph 26 of the FtT decision records the submission that the appellant should not be expected to return to China and apply for leave from there because "it would be impossible to meet the language test". The judge does not resolve the point. I enquired about the foundation for that submission, and it turns out there was none. There is no more difficulty in the way of the appellant preparing for and taking the language test than for the average person. It is presumed to be a reasonable and achievable requirement. The point is incidental, but given the appellant's poor immigration history, it is as well to make it clear that there would be no reason not to expect her to apply from abroad, if the rules so require.
14. The decision of the First-tier Tribunal shall stand.
15. No anonymity direction has been requested or made.



10 December 2018
Upper Tribunal Judge Macleman

