



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

Appeal Number: HU/13732/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 5th August and 15th August 2019**

**Decision & Reasons Promulgated
On 22nd August 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

CHUANGQING YU

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W P Tan, Caveat solicitors

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a Chinese national date of birth 17th May 2000 was granted permission to appeal the decision of First-tier Tribunal Judge Lucas who dismissed his appeal against the refusal of his human rights claim that he be granted entry clearance to join his father, Xue Biao Yu in the UK. At a hearing before me on 5th August 2019, Ms Jones acknowledged that the First-tier Tribunal Judge had erred in law such that the decision should be set aside to be remade.

2. I set aside the decision but was unable to proceed to remake the decision because there was no Mandarin interpreter and Mr Yu was required to give oral evidence. The resumed hearing was listed for 15th August 2019.

Remaking the decision

3. Mr Yu gave oral evidence through a Mandarin interpreter.
4. It was agreed that the only issue to be determined was whether the sponsor, Mr Yu, had sole responsibility for the appellant; other than that issue, it was agreed that the appellant met the requirements of the Rules such as to enable entry clearance to be granted.
5. The following matters are not disputed. Mr Yu came to the UK in 2001; the appellant was a year old at that time. His first wife, Ms Xue, and their two children were living with his parents. Mr Yu is currently on a 5-year route to settlement following his marriage to Ms Wu in 2016. Mr Yu and Ms Xue were divorced in 2011. They had two children, a son and daughter. One of the outcomes of the divorce was that Mr Yu retained 'fostering' of his daughter and Ms Xue had the 'fostering' of the appellant. I heard no formal expert evidence as to the meaning of the term 'fostering' as it was translated from the divorce documents, but it was accepted that the term appears to equate with responsibility and care both financial and emotional. His daughter is, for all material purposes, an adult, non-dependant and living in China with her partner. In 2016 Ms Xue applied to the court to have the fostering arrangement regarding the appellant transferred from her to Mr Yu; that order was made, according to the court document, after the appellant had been consulted as to his views because of his age. There was financial evidence that Mr Yu had been sending money to the appellant since 2016 but no evidence of transfer of funds before that.
6. The areas of dispute centre around, in essence, the contact that the appellant has with his mother, if any, and the extent to which Mr Yu does in fact have, and had, sole responsibility.
7. The respondent, in the decision the subject of this appeal and in submissions, took the view that the evidence was inconsistent as to whether Ms Xue was involved with the appellant's life and the extent to which she exercised responsibility for him in accordance with the divorce documents and that the change in fostering arrangements in 2016 was not reflective of Ms Xue's actual involvement.
8. Mr Yu's evidence was that Ms Xue had remained living with the appellant at his parents' home until the appellant was 5 years old. She had then left and neither he nor the appellant had any contact with her since then. In 2011, when the appellant was 11 years old, he went to live with Mr Yu's brother, his wife and their two daughters. He remained living there until the brother, his wife and the two daughters went to Australia in 2017. Mr Yu's brother did not include the appellant on the application to move to Australia. Between 2011 and 2017, the appellant visited his grandparents occasionally (about a 2-hour bus journey

away) but they had no real involvement in his life because they were old and frail. Mr Yu did not say that they suffered any specific health problems other than those associated with age. Mr Yu was insistent that decisions about the appellant were made by him; his brother facilitated those decisions but did not have responsibility for them.

9. The evidence on the appellant's change of school at age 11 was unclear in as much it was not clear whether the appellant had moved to Mr Yu's brother to attend a particular school or whether that was the state school which the government had transferred the appellant to when he reached secondary school age and it was for that reason he went to live with Mr Yu's brother. What was not disputed was that Mr Yu had investigated, discussed with the appellant his vocational education after completing secondary school and taken the decision and paid for that enrolment and education – since September 2016. Nor was it disputed that Mr Yu's brother and his family went to Australia in 2017. The dispute centred around the responsibility taken by the brother for the care of the appellant.
10. There was a slight conflict in the evidence given by Mr Yu and the responses to questions asked of the appellant by the ECO. Mr Yu did not think that his parents had attended school/parents' meetings with the appellant whereas the appellant said they had attended once or twice but then ceased. I do not find that discrepancy significant. The whole tenor of the evidence given by the appellant and Mr Yu was that whatever care they had given to the appellant ceased after he moved to the appellant's brother's home and became nothing more than occasional visits.
11. The respondent relied upon the court order changing the fostering arrangements to support the submission that the appellant remained in contact with his mother and thus Mr Yu did not have sole responsibility at the date of application and decision. The proceedings were, according to Mr Yu, served at his parents' home and until they were served neither he nor his parents had any idea that such an application was being proposed. He said that his parents had not spoken to his ex-wife about the proceedings and did not know where she was. He himself did not know the purpose behind the proceedings but speculated, as he had been told by a friend, that his ex-wife might wish to remarry and, because of the consequences to inheritance if she remained responsible for the appellant, she wished to be relinquished of all legal obligations even though she had never fulfilled her obligations. The appellant's evidence was that he had had no contact with his mother since he was five years old. There was no submission that the appellant was untruthful.
12. The appellant in his responses to the ECO's questions, said that since his uncle moved to Australia in February 2017 (when he was aged 16), he has lived alone in a flat paid for by Mr Yu. Mr Yu's evidence was that he, Mr Yu paid and continues to pay for a carer to look after the appellant. This evidence was not challenged by the respondent. Mr Yu's (unchallenged evidence) was that once the appellant started at vocational school he boarded and went to the uncle's home at weekends but as it became clear that the uncle would be going to

Australia, Mr Yu arranged for the appellant to live in flat near the school with a nanny/carer. This arrangement took place from the end of September 2016.

13. Mr Yu, in his witness statement confirmed that he was responsible for the appellant financially and emotionally; he confirmed he made all the significant decisions in the appellant's life and that his parents initially and then his brother took day to day decisions but the overall care, responsibility and decisions regarding the appellant and his sister were made by him. Although the respondent in the decision disputes the appellant lives alone, Mr Yu's evidence was not disputed by way of cross examination.
14. The respondent in the decision, casts doubt upon the appellant's address because a different address was given for his TB test to the one where he said he was living. Mr Yu explained that by reference to Hukou registration. That explanation was not challenged by Ms Jones.
15. The respondent concludes that the evidence is such that the appellant's mother is involved in his life and that he is provided with support and guidance by his grandparents. I do not agree. The evidence does not support such a conclusion but rather the opposite. I am satisfied the appellant has had no contact with his mother whether financial or emotional since he was aged about 5. I am satisfied that there is no support provided by the grandparents save that the appellant sees them occasionally. I am satisfied that they do not provide financial, emotional or other care or guidance to the appellant.
16. I am satisfied that Mr Yu provides, and provided at the relevant date, financial, emotional and full support for the appellant. I accept the evidence that they speak frequently and regularly on the telephone; that he travels to China to be with his son when work allows and that his present wife has become a support for the appellant. I accept the evidence that Mr Yu has provided full financial support since he left China when the appellant was a year old and that the only person to whom the appellant can turn to for guidance, proper care and support is his father. I accept the evidence that this was also the case during the appellant's teenage years when he was living with his uncle. I also accept Mr Yu's (unchallenged evidence) that the appellant's emotional needs have increased during the last few years because the fact of the uncle and his family leaving China has resulted in the appellant losing what he perceived to be friends and thus being alone.
17. For these reasons I am satisfied that the appellant's father, Mr Yu, has and had sole responsibility for the appellant at all material times. The appellant thus meets the criteria in the Immigration Rules. It follows, and was not submitted otherwise, that the decision to refuse the appellant entry clearance was disproportionate.
18. I allow the appeal.

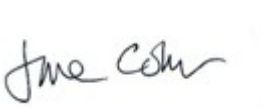
Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing it.

Date 19th August 2019

A handwritten signature in cursive script, appearing to read "Jane Coker", enclosed within a rectangular box.

Upper Tribunal Judge Coker