



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000677

FtT No: HU/53371/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21st of December 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RUIQIN HE

(no anonymity order requested or made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr I Halliday, Advocate, instructed by Chung, Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at Edinburgh on 13 December 2023

DECISION AND REASONS

1. FtT Judge McLaren dismissed the appellant's appeal by a decision dated 13 February 2023.
2. Permission to appeal to the UT was granted by FtT Judge Lawrence on 16 March 2023.
3. The first ground is entitled "failure to have regard to paragraph E-ECP.2.1 of appendix FM". This is directed against the decision at 14(d), where the Judge said that it would be "open to the appellant to return to China and make an application for entry clearance from there to the UK".
4. That statement is correct, as far as it goes; but the Judge does not say how that possibility factors into her proportionality assessment, or whether such an application would have any chance of success.

5. As explained in the grounds and in Mr Halliday's skeleton argument and oral submissions , such an application has little or no chance of success, unless perhaps after the sponsor becomes settled in the UK, which is not in prospect until at least March 2031. Mr Diwyncz agreed with that analysis.
6. The Judge erred by leaving the impression that a positive prospect of obtaining entry clearance from China was a factor against the appellant.
7. Ground 2 is "failure to take into account the consequences of returning to China for the sponsor". This is based, under reference to *GM (Sri Lanka)* [2019] EWCA Civ 1630, on the sponsor losing his position on a pathway to settlement.
8. Mr Diwyncz accepted that this was a relevant feature of the case, and that it was not mentioned in the balancing exercise.
9. Ground 3 is "failure to make factual findings on the length and strength of the relationship" between the appellant and the sponsor.
10. The Judge's remark is again at 14 (d):- there was "very limited evidence about the length and strength" of the relationship. Again, that might be strictly correct, but the parties were not at odds on the matter, and the respondent's advocate at the hearing sought no adverse finding. This was the Judge's express reason for not placing much weight on "the partner's proximity to settled status". Her point does not survive scrutiny.
11. The three grounds are well taken. Mr Halliday, rightly, did not argue that any of them, or even all of them together, dictated the contrary outcome; but Mr Diwyncz, also rightly, did not submit that they could safely be overlooked. The outcome was agreed to be as follows.
12. The decision of the FtT is set aside, other than as a record of what took place at the hearing. The case is remitted for a fresh hearing before another Judge.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
13 December 2023