



IAC-AH-DH-V1

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

Appeal Number: IA/11281/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 8 October 2014

**Determination
Promulgated**

On 21st Oct 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MEI QIN WENG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain, instructed by Kingswell Watts, Solicitors
For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mei Qin Weng was born on 12 May 1968 and is a female citizen of China. In her decision dated 18 February 2014, the Secretary of State refused the appellant leave to remain in the United Kingdom and also made a decision to remove her under Section 10 of the Immigration

and Asylum Act 1999. The appellant appealed against that decision to the First-tier Tribunal (Judge Grimshaw) which, in a determination promulgated on 17 June 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant entered the United Kingdom as a visitor in May 2008. Her leave expired on 14 November 2008. She did not return to China but remained living in the United Kingdom and was encountered by UK immigration authorities on 10 March 2012. She applied for leave to remain on the basis of her private and family life with her husband, Zhenli Lin. Mr Lin has indefinite leave to remain in the United Kingdom. On 18 September 2013, the appellant submitted a statement of intention to depart on a flight booked on 5 January 2014 but she failed to leave the United Kingdom. Instead, she made a further application for leave to remain and it is that application which falls to be considered in this appeal.
3. The respondent accepts that the appellant has a genuine and subsisting relationship in the United Kingdom with her husband. The respondent considered it not unreasonable for Mr Lin to re-establish his family life with the appellant in China. Both the appellant and Mr Lin had lived in China during their early married life.
4. Both parties accept that the appellant cannot remain in the United Kingdom under the provisions of the Immigration Rules; she was an overstayer and did not have leave to remain at the date of her application. The appeal was considered under Article 8 ECHR only.
5. Ground 2 is without merit. This ground asserts that the judge applied the principles of *Gulshan (Article 8-new rules-correct approach) [2013] UKUT 640 (IAC)*. It is asserted that the judge failed to indicate what good grounds existed to enable her to consider the appellant's claim outside the Immigration Rules. It is clear that, if the judge had not found there to be good reason to go on and consider Article 8 ECHR outside the Rules, then the appellant's appeal would have failed in any event. Furthermore, as the Court of Appeal has made clear in *MM [2014] EWCA 985* at [129] the imposition of an intermediary "compelling circumstances" test is otiose. The judge's decision to consider Article 8 can hardly be regarded as an error of law in such circumstances.
6. Likewise, I do not consider that ground 3 has merit. The judge considered all the relevant circumstances, including those aspects of the case which weighed in favour of the appellant in the proportionality assessment. Ground 3 represents nothing more than a disagreement with findings open to the judge on the evidence.
7. The main thrust of Mr Hussain's submissions focussed upon ground 1. He submitted that the judge had failed to provide a clear, cogent analysis of the facts under Article 8. At [20], the judge had identified

That the factors that weigh in favour of the appellant... it makes no sense for Mr Lin to leave his job and home in order to accompany the appellant to

China... the economic considerations and the legitimate demands of immigration control are not justified in this case.

However, at [24] the judge stated that

The appellant must show more than mere hardship as a consequence of being removed to China. Inevitably, removal will result in the temporary rupturing of her shared life with Mr Lin. Though it may be difficult for Mr Lin to accompany the appellant to China the obstacles to return arguably do not go beyond the issues of choice or inconvenience on their part. Given the couple's claimed attachment to each other and their access to accommodation and support in China from their adult children it is not unreasonable to expect Mr Lin to elect to leave with the appellant... If Mr Lin decides not to accompany the appellant to China it is reasonable to suppose that far from breaking up their relationship the strength of their marriage would be sufficient to meet the challenge of their separation.

Mr Hussain submitted that these two passages of the determination were not consistent. The appellant was left in doubt as to whether the judge had concluded that "the economic considerations and the legitimate demands of immigration control" were outweighed by the interference which would be caused to the appellant's private and family life by her removal.

8. I acknowledge that the two passages which I have quoted from the determination appear under a sub-heading entitled "My Findings and Conclusions". However, it is entirely clear to me, upon reading the entire determination, that the analysis is not inconsistent. Paragraph 20 opens with the words "I find that the factors that weigh in favour of the appellant are as follows." The judge has then set out the arguments in favour of the appellant remaining in the United Kingdom. Where she says that "it makes no sense for the appellant to return to China..." she is doing nothing more than setting out the appellant's case. At [22], she opens the paragraph with the words, "I find the factors that weigh in favour of the Secretary of State are as follows." What is, perhaps, unfortunate is that, having set out the factors for and against the appellant, the analysis moves on to the judge's own findings of fact and conclusions under the same sub-heading. However, I do not find that the appellant or any other reader of this determination would be left in any doubt as to the judge's conclusions. Having stated the arguments in favour of both parties, she states [26] that her

overall conclusion is that the interests of the appellant in allowing to remain in the United Kingdom must give way to the greater weight to be apportioned to the legitimate aim of protecting the economic wellbeing of this country and the maintenance of fair immigration control.

The judge leaves the reader of her determination in no doubt as to the reason she has dismissed the appeal. Consequently, I have concluded that the judge has not erred in law such that the determination falls to be set aside. At the conclusion of the hearing, the appellant addressed me directly, raising a number of issues which were not addressed in the

refusal letter or determination. It is a matter for the appellant and her advisers as to whether she wishes to place any of those or any other matters before the Secretary of State.

DECISION

This appeal is dismissed.

Signed

Date 20 October 2014

Upper Tribunal Judge Clive Lane