



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03741/2013

THE IMMIGRATION ACTS

Heard at Glasgow  
On 4 October 2013

Determination Sent

Before

MR C M G OCKELTON, DEPUTY PRESIDENT  
UPPER TRIBUNAL JUDGE DEANS

Between

MRS QIUTING WU  
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Rea, Maguire Solicitors  
For the Respondent: Mrs M O'Brien, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) This is an appeal with permission against a decision of a panel comprising Judge of the First-tier Tribunal Dennis and Dr C W Winstanley. The panel dismissed an appeal by the appellant on asylum and human rights grounds.
- 2) The appellant is a national of China. She came to the UK in September 2006 as a student but she abandoned her studies after less than two years. She then carried on working part time and stayed with friends or acquaintances in various different parts of the UK. In July 2012 she met a man referred to for the purpose of this appeal as CY,

who is also a Chinese national. They began a relationship for a short period during which the appellant became pregnant. The appellant then lost contact with CY until the following January, when she was reunited with him in Glasgow. They then each made claims for asylum.

- 3) The First-tier Tribunal found the account of events given by the appellant as the basis for her asylum claim to be wholly without credibility. The Tribunal took into account that the appellant would be returning to China with her child, which was a few months old at the date of the hearing. The Tribunal heard that the appellant and CY were married in March 2013. The Tribunal was satisfied the appellant left China legitimately and found no appreciable risk to her or her son on return.
- 4) The panel went on to consider the appellant's right to private or family life. Any private life the appellant established here was in the knowledge that the appellant would have to return. The panel considered the best interests of the appellant's son as a primary consideration. His best interests lay in being with his mother and this would not be compromised if the mother and child were returned to China, where the child would have no difficulty in adapting to life there. He would not be subject to any bureaucratic discrimination or any risk on return.
- 5) The Tribunal considered the alleged relationship between the appellant and her husband CY. The Tribunal accepted that the marriage had taken place and that CY was identified as the father of the child. He did not, however, give evidence or participate in any manner in the present appeal. The Tribunal recognised that this might have been not to compromise his own outstanding claim for asylum. Nevertheless, on the evidence the Tribunal could not be satisfied that there was family life between the appellant and her son, on the one hand, and CY on the other. The Tribunal accepted, however, that if it were to be established in her husband's asylum claim or any subsequent appeal that there was family life between CY and the appellant and her child then the Tribunal would accept that the return of one to China without the other partner would constitute an interference with family life. The proportionality of this would remain to be assessed. The Tribunal concluded that were family life to be so established and the appellant's husband found not to be at risk of persecution or serious harm on return, then the removal of the appellant with her husband and child would not be disproportionate so far as the circumstances of the appellant and her child were concerned.
- 6) Following the Tribunal's decision, an application for permission to appeal was made to the First-tier Tribunal. This was refused. An application was then made to the Upper Tribunal in relation to Article 8 issues only. Permission was granted by the Upper Tribunal on the ground that arguably the panel's consideration of family life between the appellant and her child and her husband needed to await resolution of the husband's asylum claim. Permission to appeal was granted so that the Tribunal could be told at the first opportunity what was happening in relation to this.

- 7) The appeal was listed before us for mention only in order to ascertain the status of the appellant's husband's asylum claim. We were informed by Mrs O'Brien that this was refused on 20 September 2013, although she had no details of any subsequent appeal. For the appellant, Mr Rea informed us that he understood an appeal to have been lodged by Latta & Co, who are acting on behalf of the appellant's husband. He asked that the hearing of the present appeal should be deferred until after the appellant's husband's appeal had been determined.
- 8) There was then a discussion about the ground on which the present appeal to the Upper Tribunal was made. Mr Rea confirmed that this was on Article 8 grounds only. It was put to Mr Rea that the grounds for permission to appeal made to the Upper Tribunal disclosed no error of law and that the only reason why the appellant ought not to be removed immediately was to await a decision on her husband's appeal.
- 9) Mr Rea submitted that if the appellant's husband's appeal was successful then the appellant would have a good Article 8 claim. In response it was put to Mr Rea that if the husband's appeal succeeded, then the appellant should expect to be granted leave as his dependant. There was, however, no error of law in the decision of the First-tier Tribunal in respect of the appellant. In response Mr Rea stated that he had no instructions to withdraw the appeal. He consented to the for mention hearing being treated as the hearing of the appeal.
- 10) Mr Rea very properly did not seek to argue before us that the grounds on which the application for permission to appeal was made disclosed an error of law in the decision of the First-tier Tribunal. Indeed, we see no error of law arising from them. The Tribunal found, as already stated, that it would not be disproportionate for the appellant and her child to be removed together. The panel accepted that the appellant and CY are married and that CY is the father of the child. Because of the almost complete absence of evidence on whether there was continuing family life between the appellant and her husband, the Tribunal was unable to conclude that it would be disproportionate to remove the appellant and her child without her husband. These were findings the Tribunal was entitled to make for the reasons which they gave.
- 11) The position now is that it is for the appellant's husband in his appeal to establish that he enjoys family life with the appellant and her child. If this is established, we would accept that there might be a disproportionate interference with family life were the appellant and her child to be removed to China without the appellant's husband. A definite finding to this effect would depend upon evidence as to the appellant's husband's circumstances, which should be forthcoming in his appeal.
- 12) If, on the other hand, the appellant's husband establishes in his appeal that he has a well founded fear of persecution or serious harm in China as well as showing that he has family life with the appellant and her child, then we would anticipate that the appellant and her child would be permitted to stay along with the appellant's husband.

13) As far as the present appeal is concerned, however, we find no error of law in the determination by the First-tier Tribunal and accordingly its decision will stand.

**Conclusions**

14) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

15) We do not set aside the decision.

**Anonymity**

16) The First-tier Tribunal did not make a direction for anonymity and having received no application for an order to this effect, we make no such order ourselves.

Signed

Date 4<sup>th</sup> November 2013

Upper Tribunal Judge Deans