Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06307/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 3rd January 2014

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

BIN CHUEN LIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Rafter, instructed by Rahman & Company Solicitors
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Robson made following a hearing at Bradford on 8th October 2013.

Background

2. The Appellant is a citizen of China, born on 19 August 1972. He left China in November 1999 and claimed asylum in the UK. He did not attend his screening interview and recontacted the Home Office on 27th August 2010. In October 2010 the Secretary of State wrote to his representatives, who replied in January 2011, and the Appellant attended a screening interview in February 2011. There was a 28 month delay before his substantive interview and refusal of the asylum claim in June 2013.

3. The judge concluded that there was no truth in the Appellant's claim to fear persecution upon return to China and there is no challenge to that aspect of his decision.

4. The judge also considered the Appellant's claim that a return to China would breach his Article 8 rights. He considered the evidence of witnesses, friends of the Appellant, and concluded that his friendships could be resumed by other methods of communication were the Appellant to leave the UK, and that any interference with the Appellant's private life would be proportionate.

The Grounds of Application

5. The Appellant sought permission to appeal on the grounds that the judge's assessment of the Appellant's Article 8 rights was flawed in that he had failed to take into account material considerations, in particular the fact that the Appellant had been resident in the UK for nearly fourteen years, he had not been back to China since coming to the UK, had not claimed public funds or been a drain on the economy of the UK, and had no criminal convictions. Morever there had been a delay attributable to the Respondent. The judge had not conducted a balanced assessment of all relevant factors and had thereby materially erred in law.

6. Secondly, in the Reasons for Refusal Letter the Respondent had purported to consider the Appellant's case under the legacy programme but she had not considered paragraph 353B of the Immigration Rules. The Appellant relied on the case of Okonkwo (Legacy/ Hakemi: health claim) [2013] UKUT 00401 which states:

> "It may be unfair for the Secretary of State to apply the terms of a policy to a case that fell within the terms of the policy when it was in existence: Hakemi and Others [2012] EWHC [1967] (Admin) and Muhammad [2012] EWHC 3091 (Admin) considered."

7. Permission to appeal was granted by Designated Judge Appleyard on 12th November 2013 for the reasons stated in the grounds.

Submissions

8. Miss Rafter relied on her grounds and submitted that it was an error for the judge to focus only on the Appellant's relationships within the UK. He

had not conducted a balanced assessment and in particular had not placed due weight upon the fact that he had been in the UK for some fourteen years.

9. She argued that the Respondent was under an obligation to consider the Appellant's claim under the legacy programme. She accepted that a significant part of the delay was attributable to the Appellant in that he had failed to attend his initial interview but he had brought himself to the attention of the Respondent in 2010 thereby attempting to regularise his situation. It was his case that he had lost the relevant papers. There was no evidence that he had worked illegally or that he had claimed benefits or that he had been a drain on the UK's resources in any way. Had the correct guidance been applied as at the date of the Appellant's initial contact with the Respondent in 2010 he might have been granted indefinite leave to remain under the policy as that time.

10. Mrs Pettersen submitted that there was no error in the determination. The judge had properly recorded the evidence of the Appellant and his witnesses and there was no indication that he had established any family life in the UK Indeed his wife and children were in China. He did not meet the requirements of the new Immigration Rules with respect to Article 8 and the judge was entitled to consider that there was nothing exceptional in his circumstances which should lead to his succeeding outside them. It was clearly in the judge's mind that the Appellant had been in the UK for a lengthy period of time but he was clearly sceptical about the evidence that he had not worked here. Finally given that the Appellant had been diagnosed with hepatitis B it was likely that he was receiving medication and assistance through the NHS.

11. With respect to the legacy point, she observed that the reasons for refusal letter was written by a person within the Older Live Cases Unit who was properly applying the policy as at the time of the refusal.

Findings and Conclusions

12. There is no error of law in this decision. The judge was plainly aware of the length of time that the Appellant had been in the UK and it is clear that this was at the forefront of his considerations. The Appellant confirmed to him that he had not undertaken any voluntary work or charity work and had not, for most of the time, attempted to learn English. The judge was entitled to state that the Appellant had not integrated into the UK in his private life which would clearly be a factor in deciding whether removal was proportionate. He assessed the evidence of the witnesses and their relationship with the Appellant. The judge did not accept that the Appellant had not worked unlawfully whilst in the UK. Whilst the Appellant has been in the UK for a lengthy period of time, for most of that time was an absconder who had failed to cooperate with the authorities. The decision that removal would be a proportionate interference with the Appellant's private life was one which was clearly open to the judge.

13. With respect to the legacy point, the author of the reasons for refusal letter is stated to be a member of the Older Live Cases Unit. He considered whether the Appellant should benefit from a grant of leave to remain in the UK. There is nothing unlawful in the Respondent's consideration of the Appellant's case. The Secretary of State's has not failed to apply the terms of a policy. Even if there had been a more generous policy in 2010 and he may have had a positive decision at that point it does not mean that the decision in 2013 was unlawful. The Appellant has received the decision which he was entitled to by the author of the reasons for refusal letter. Given the Appellant's immigration history it is unsurprising that, under the present policy, it was not made in his favour. Paragraph 353B does not confer any entitlement to any form of leave.

Decision

14. The original judge did not err in law and his decision stands. The Appellant's appeal is dismissed.

Signed Date

Upper Tribunal Judge Taylor