Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/22412/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 2nd May, 2014	**On 15th May 2014**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR YOUSHENG ZHEN

Respondent

Representation:

For the Appellant: Mr M Dinwycz, a Home Office Presenting Officer
For the Respondent: Mr R Oryon of Counsel

FINDING OF AN ERROR OF LAW
and
REMITTAL TO THE FIRST-TIER TRIBUNAL

1. The Secretary of State is the appellant in these proceedings, but for the avoidance of confusion I shall refer to her as "the claimant". The respondents are all citizens of the People's Republic of China. They

comprise mother, father and two children whose dates of birth are 23rd January, 1973, 7th June 1974, 13th December, 2001, and 28th March, 1994 respectively. The first respondent entered the United Kingdom on 28th January, 2008 with a multi-entry work permit visa valid until 26th February, 2013. His wife and children then joined him in the United Kingdom on 9th December, 2008 and were given leave in line with his. On 13th February, 2013 the respondents applied for indefinite leave to remain in the United Kingdom, the second, third and fourth respondents' applications being reliant upon the first respondent's application.

2. The claimant refused the respondent's application. On 28th May, 2013 the claimant gave directions for the first respondent's removal under Section 47 of the Immigration, Asylum and Nationality Act, 2006, in the same notice.

3. Having refused to vary the respondent's leave, the respondents gave notice of appeal and their appeal was heard by First-tier Tribunal Judge A K Simpson who, in a determination promulgated on 24th January 2014 allowed the Appellants' appeals on immigration and human rights grounds. The judge said, of the claimant's decision to give directions for the respondent's removal under Section 47 of the Immigration, Asylum and Nationality Act 2006 that it, "is not merited".

4. The claimant's grounds assert that the judge's findings under paragraph 134 of HC 395, as amended, are inadequate as there was insufficient evidence to support the first respondent's claims. The challenge points out that the Immigration Rules require satisfactory documentary evidence to confirm that the Immigration Rules have been satisfied, but such evidence was not produced by the respondents. The second challenge suggests that the judge concludes that the appeal engages all four respondents' rights under Article 8, but the determination does not disclose anything exceptional in their circumstances that would require the appeal to be allowed on this basis. Given that the second, third and fourth respondents are dependent upon the first respondent where his application has been refused they would all be removed as a family and their right to family life would not therefore be breached.

5. An examination of the determination shows that the judge did not actually indicate that the appeal was being allowed on human rights grounds under Article 8, she simply said at the end of her determination under the heading "decision", "all the appeals are allowed on immigration and human rights grounds".

6. Mr Dinwycz pointed out that at paragraph 2 of the determination the judge noted that the employer provides accommodation the appellants but has not taken that benefit in kind into account in calculating the first respondent's earnings. He sought to amend the grounds because he now had evidence that he wished to adduce which, he claimed, showed that the first respondent's employer had not disclosed the benefits in kind to

HM Revenue and Customs. This, he suggested, showed that the first respondent's employer was not somebody who should have been found to be credible.

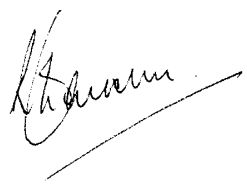
7. I refused to amend the grounds of appeal. There had been more than ample time for the Secretary of State to raise this point as an issue in writing before the hearing so that the respondents and their representatives were placed on notice. I did not believe in the circumstances that it would be just to allow the grounds to be amended.

8. I handed to the representatives a copy of what I believed to be the current Immigration Rule paragraph 134 and the current immigration rule 134SD. I asked them to confirm that they were the relevant Rules in play at the date of the claimant's decision. Mr Oryan confirmed that they appeared to be in identical format to the Rules at the relevant date. He referred me to paragraph 134(v) and suggested that the documents which were submitted were as required, but they were not certified and he confirmed that the bank statement did not corroborate the wage slips which were submitted.

9. I indicated that I was satisfied that the documents submitted in connection with the respondent's application did not meet the requirements of paragraph 147. The bank statements were required to corroborate wage slips but did not do so. The judge erred in finding that the first respondent met all the requirements of paragraph 134 and I set aside that determination.

10. I indicated to both representatives that in view of the length of time the parties would have to wait for the matter to be relisted before me in Manchester it might be more appropriate that I remit the appeal to be heard by a First-tier Tribunal other than by First-tier Tribunal Judge Simpson. Neither representative had any objection.

11. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's Practice Statement, given the length of time the parties would have to wait for the matter to be relisted before me in Manchester and that it could, conversely, be heard relatively speedily by the First-tier Tribunal. In view of the overriding objective informing the onward conduct of this appeal I have decided that the appeal be remitted to the First-tier Tribunal for hearing afresh before a First-tier Tribunal Judge other than First-tier Tribunal Judge Simpson.



Upper Tribunal Judge Chalkley