



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/36184/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 19 November 2014
Prepared on 19 November
2014**

**Decision & Reasons
Promulgated
On 19 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR YAO CHENG
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms S Vydyadharan, Home Office Presenting Officer
For the Respondent: Ms D Revill, Counsel instructed by Astor Visas

DECISION AND REASONS

1. In this determination the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of the People's Republic of China (PRC), appealed against the Secretary of State's decision dated 15 August 2013 to refuse a combined application for leave to remain

as a Tier 1 (Entrepreneur) Migrant under the points-based scheme. In addition the decision was combined to make removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The appeals against those decisions came before First-tier Tribunal Judge F Beach, who on 27 August 2014 allowed his appeal under the Immigration Rules and it is to be inferred would, had she done so, have allowed the appeal against removal directions.
4. On 2 September 2014 the Secretary of State sought permission to appeal the decision and on 14 October 2014 First-tier Tribunal Judge P J M Hollingworth granted permission to appeal.
5. The Secretary of State's grounds have been helpfully crystallised in submissions to essentially a complaint that the judge has failed to give adequate reasons for the decision reached.
6. It is trite law that parties to an appeal are both entitled to adequate and sufficient reasons from the judge so that the decision on its key elements can be properly understood.
7. Ms Vydyadharan, who did not appear before Judge Beach, argued by reference to grounds, which she did not settle, that there are inadequate findings on key elements of the claim. Ms Revill, who did appear before the judge, was in a position to make submissions with reference to the documentation to show that of three principal areas raised in the reasons for refusal and essentially pursued in the appeal, the judge did enough or sufficient to show that a proper consideration had been given to the merits of the case.
8. Explanations were given to the judge concerning the operation of a website which the Claimant had been building; in respect of which the officer investigating the application had been unable to obtain access to all pages of the particular website. Secondly that the domain name of the website had not been registered and thirdly that an impression had been created from the website that there were two persons, creative energetic designers, one being the Claimant, and the other a lady called Ni, who had been involved in the start-up of the operation.
9. In fact, from virtually the earliest moment, unchallenged in interview, it was apparent that it was not a team application at all but simply by the Appellant himself and indeed explanation was given to the judge confirming that it was not such a team application.
10. If it had been a team application and there had been any doubt in those investigating this matter prior to issuing the Reasons for

Refusal Letter then it would have been more openly and fully addressed in interview by the Secretary of State.

11. It is fair to say that the Reasons for Refusal Letter was drafted by a Miss Spooner, on behalf of the Secretary of State, whereas the interview of which part only is disclosed was conducted by a Miss or Mr Solanki. In the circumstances it is apparent to me that there needed to be very great caution in addressing and relying upon particular answers in an interview when quite simply the full interview has not been provided to the judge and there was no complete version at the hearing before the judge. Thus only very limited value could really be given to the interview as such when there was apparently either a cherry-picking selection or omissions which had simply not been taken into account by the person drafting the Reasons for Refusal Letter, perhaps unaware of the inadequacies of the presented interview.
12. In any event the fact of the matter was that the judge was alive to those issues, aware of the general criticisms by the Presenting Officer at the hearing concerning the Claimant, the quality of the evidence he gave and, perhaps surprisingly, also the issue of the Claimant demeanour; not a subject generally pursued by way of submissions against an Appellant. The judge plainly took those matters into account and although they do not form part of the reasons for refusal showed the thorough and careful approach taken by an experienced Judge of the First-tier Tribunal. She not only considered the issues raised in the Reasons for Refusal Letter but also those arising at or out of the hearing.
13. It is clear that the judge was unimpressed with criticism of the Claimant and his intended business. Rather it appears to me that in relation to the issues raised the judge did deal with them. It has to be accepted by reference to one point over the domain name, dealt with it by inference rather than an express analysis. It seems to me that that is at its highest the complaint that the Secretary of State can properly make but the domain name is I find a non-point because as the Appellant made clear at this stage none is required. In reaching this view I take into account the cases of R (Iran) [2005] EWCA Civ 982, E & R [2004] QB 1044 CA and VHR [2014] UKUT 367 (IAC) and the self-evident proposition that it is not necessary for a First-tier Tribunal Judge to pick up each and every point made by the parties, analyse it and reach conclusions upon them. The position was made clear in the case of Karanakaran [2000] EWCA Civ 11 and I see nothing in recent case law that changes that position. It is similarly as clear as can be that there is an obligation on the judge to give reasons and to give adequate reasons sufficient to understand the decision.
14. I conclude, having looked at the position, that in this case the judge dealt with the principal concerns of the Secretary of State,

assessed the evidence of the Claimant and was entitled to reach the conclusion that she did on the evidence before her. The fact that I might have reached a different decision is not a proper basis for interfering with the judge's decision. Indeed time and again the High Court has indicated that within this Tribunal it is not for the Upper Tribunal to substitute a different view to that reached by the judge because a different decision might have been reached.

15. The Original Tribunal's decision stands and the Secretary of State's appeal fails.

NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction is made nor was one sought.

Signed

Date 17 December 2014

Deputy Upper Tribunal Judge Davey