Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/36230/2013
IA/36495/2013

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 29 July 2014	**On 6 August 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RONG HUA ZHANG
GUI YING CHEN

Respondents

Representation:

For the Appellant: Mr A McVeety, Home Office Presenting Officer
For the Respondents: No representative

DETERMINATION AND REASONS

1. The Secretary of State appeals against a decision of the First-tier Tribunal (Judge C J Woolley) allowing the appeals of Rong Hua Zhang and Gui Ying Chen under para 276ADE of the Immigration Rules (HC 395 as amended).

2. For convenience, I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The first and second appellants are citizens of China who were born on 19 May 1939 and 23 December 1938 respectively. They are married. The appellants arrived in the United Kingdom on 8 April 1997. On 26 September 2012, the appellants made applications for indefinite leave to remain in the UK on compassionate grounds. On 16 July 2013, the Secretary of State refused each of the appellants' applications under the Immigration Rules (HC 395 as amended) and under Article 8 of the ECHR. On 20 August 2013, the Secretary of State made decisions to remove each of the appellants to China.

The Appeal to the First-Tier Tribunal

4. The appellants appealed to the First-tier Tribunal.

5. Before Judge Woolley it was conceded that the appellants could not succeed under Appendix FM of the Rules. Reliance was, however, place upon para 276ADE and Article 8 of the ECHR based upon the appellants' private life and long residence in the UK. Judge Woolley allowed each of the appellants' appeals under para 276ADE(vi) on the basis that they had established that they had "no ties (including social, cultural or family)" with China. Judge Woolley concluded that their links with China were "remote and abstract" and, applying Ogundimu (Article 8 – New Rules) Nigeria [2013] UKUT 00060 (IAC) they had "no ties" within the meaning of para 276ADE(vi). In the light of that finding, Judge Woolley considered it unnecessary to consider the appellants' rights under Article 8 of the ECHR.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the Judge had been wrong in law to find that the appellants had "no ties" with China. The grounds of appeal were in the following terms:

> "I. In determining whether or not the Appellants would have ties to China for the purposes of Para 276ADE, the judge erred in failing to consider that both appellants would be removed together, and so each would have ties to China by virtue of the other's presence.
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> 1. At [29] the judge found that the Appellants had no ties to China for the purposes of Para 276ADE, on the basis that although they spoke Cantonese, the appellants had no family remaining in China and had had no contact with that country during the seventeen years in which they had been in the UK.
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> 2. The judge erred in finding the Appellants' ties to be "remote and abstract". Each Appellant made separate application, received a separate refusal letter, and made a separate appeal. While there

> are common issues of fact, each appeal needed to be considered separately on its merits.
>
> 3. The Appellants would be removed to China together. Upon arrival in China, each appellant would have a tie to China in the form of the other appellant, their spouse.
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> 4. Accordingly, it cannot be said, per Ogundimu, that each Appellant's ties are "remote" or "abstract", or that each Appellant would be a "stranger" to China upon removal."

7. On 2 May 2014, the First-tier Tribunal (Judge Parkes) granted the Secretary of State permission to appeal on the following basis:

> "3. The grounds argue that the Judge overlooked the fact that the Appellants would be removed together and would have each other presence as a tie to China. It was wrong to state that their ties were remote and abstract and they spoke Cantonese. "

8. At the hearing, neither appellant attended. However, their grandson, Mr Voong did attend. He indicated that his grandparents had not attended as his grandmother suffered from a severe car sickness. Mr McVeety, who represented the Secretary of State saw no objection to allowing Mr Voong to speak on their behalf.

9. Mr McVeety relied upon the grounds of appeal. He submitted that the Judge had failed to apply the approach set out in Ogundimu at [125] in concluding that the appellants' ties with China were remote and abstract and therefore they satisfied the requirement in para 276ADE(vi). However, he accepted that it was a novel ground of appeal to suggest that the appellants had ties with China simply because they would be returning to China together. He accepted that if neither appellant had any ties with China individually then it could not be said that they had ties with China because they were returning together. Mr McVeety submitted that the Judge had failed to consider the appellants' circumstances in the round as required by Ogundimu.

10. Mr Voong reminded me that the appellants, when they had been in China between 1978 (when they came from Vietnam) until 1997 (when they came to the UK), had worked in a government tea factory subject to long hours and had not made friends or developed cultural ties. Since 2005, when their son had died, the appellants had had neither friend nor family in China. Two of their daughters were in the USA and another daughter (Mr Voong's mother) was in the UK. He reminded me that they had been away for 17 years and their links with China were therefore remote.

Para 276ADE

11. The relevant immigration rule applicable to this appeal is para 276ADE(vi) which provides as follows:

> "The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
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> ....(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any periods of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK."

The Background Facts

12. The background facts are set out in the Judge's determination and, as Mr McVeety accepted, are not in dispute.

13. The appellants were born in Vietnam in 1939 and 1938 respectively and were nationals of Vietnam. In 1978, they fled Vietnam to live in China where they were accepted by the Chinese government. During their time in China, the appellants had three daughters and a son. Whilst they lived in China, the appellants worked in a state tea plantation or factory. At some point, all three daughters left China to live either in the USA or in the UK. The appellants' son remained in China. In 1997, the appellants came to the UK to live with their daughter and her family. In 2005, their son in China, who suffered from liver cancer, died. It is accepted that they have no family left in China.

The Judge's Determination

14. The Judge dealt with the appellants' claims under para 276ADE in paras 26-30 of his determination as follows:

> "26. ...They have not lived in the UK for 20 years nor have they spent at least half his life in this country, since when they arrived they were both in their late fifties. The question as to whether they have any ties in China is answered in the positive by the respondent by virtue of their residence there from 1978 to 1997. In Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 (IAC) the President explained the meaning of 276ADE (vi). The natural and ordinary meaning of the word "ties" imported a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involved there being a connection to the life in that country. Consideration of whether a person had "no ties" to such a country must involve a rounded assessment of all of the relevant circumstances and was not limited to "social, cultural and family" circumstances.
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> 27. The appellant have no family left in China. They had one son but I note that he died in China in 2005. They have three daughters who now all live in the United States of America. I note their history. They were originally both born in Vietnam and married in that country when they were aged 21 and 22 respectively. In 1978 they fled to China and were received by the Chinese government. They were sent to a tea farm and lived and worked there until they came to the UK in 1997. Even though the time they spent in China therefore exceeds the time they have spent in the UK neither were originally Chinese nationals (although Ms Toney confirmed that they were both now Chinese nationals) and they have spent the

longest portion of their lives in Vietnam. The ties they have with China therefore are limited to the period 1978-1997. These ties are weaker therefore than if they had been born and spent all their lives in China prior to arrival in the UK. They both left China when they were mature adults. They had been sent to work on a tea plantation on their reception by China in 1978 and it is I find arguable whether work on a tea plantation as immigrants would expose the appellants to much of the cultural norms of Chinese society. They have no family or friends in China, as their son did there in 2005. Their ties are rather to the UK and the USA, where their surviving daughters live.

28. Both appellants still speak Cantonese – indeed it was apparent that both have very limited English indeed. Cantonese is still spoken in the family home and both the main appellants who have acquired British citizenship needed the help of the interpreter when they gave their evidence. I accept that if they went back to China that both would be able to communicate in Cantonese with the inhabitants of China. As inhabitants originally of Vietnam this would not have been their first language.

29. **Ogundimu** however requires a rounded assessment of all the circumstances. It is not limited to social and cultural ties. In answer to the question of whether they have a connection to the life of that country I find that they have no connection now to life in China. They have no family there; they receive no help or even communication from the Chinese authorities; and China in any event was their adopted home only for 19 years. They have remote and abstract links with China in that China was the country from which they came to the UK and whose language (or at least the language of Southern China) they still speak. For the last 17 years however their lives have been solely in the UK within their family and any real links with China I find were severed with the death of their son in 2005. Connection with life in China is now I find as remote and abstract for them as any connection with life in Vietnam.

30. On the rounded assessment of the appellants I find that they have no ties to China. I find therefore that they meet the requirements of paragraph 276ADE(vi) and that they are entitled to remain in the UK on the basis of their private life."

Discussion

15. The proper approach to determining whether an individual has "no ties" with his own country is set out in the Upper Tribunal's decision in Ogundimu at [123]-[125] as follows:

> "123. The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.

> 124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there.
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> 125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members."

16. As the Upper Tribunal identifies, the concept of "ties" involves something "more than merely remote and abstract links" to the country of removal. There must be a "continued connection to life in that country" which ties that individual to that country. That assessment, as Mr McVeety submitted, requires a "rounded assessment" of "all the relevant circumstances". In para [125] of its determination in Ogundimu, the Upper Tribunal set out the relevant circumstances that should be taken into account.

17. Mr McVeety's principal submission was that the Judge had failed to engage in that exercise in this appeal. I do not accept that submission. It is clear from paras 26-30 of the Judge's determination that, as he himself states in para 20, he engaged in a "rounded assessment" of the circumstances. He correctly directed himself in accordance with the Upper Tribunal's guidance in Ogundimu. The appellants were not Chinese by birth. They had come to live in China when they were approximately 40 years old. They had lived in China between 1978 and 1997, in other words for 19 years. During that time they had worked within a state tea plantation or factory and, as Judge Woolley noted in paragraph 27 of his determination, it is arguable whether that working regime would have exposed the appellants to "much of the cultural norms of Chinese society". Judge Woolley found as a fact that the appellants, having been in the UK for 17 years, had no friends in China. Equally, although whilst living in China the appellants had a family, none of that family lived in China anymore. The appellants' daughters lived either in the USA or the UK and their son had died in 2005. It must be remembered that the appellants came from Vietnam and there is no suggestion that any of their original family came to China with them. This is a case where it can be confidently said that these appellants have no family in China. Judge Woolley accepted that the appellants could speak Cantonese (one of the

languages spoken in China) and, although, this was not their first language, they would be able to communicate with people in China at least, I suppose, if they also spoke Cantonese rather than any different Chinese language such as Mandarin.

18. Although the appellants are Chinese nationals, given their history, their situation is different from that of individuals who were born and lived their entire lives until coming to the UK in China. China was, in effect, their adopted country. Even though they had lived in China for 19 years, the Judge was entitled, in my view, to conclude that as a result of their particular circumstances (including the absence of family or friends in China) that their links with China were "remote and abstract" such that they had established that they had "no ties" with China for the purposes of para 276 ADE 9(vi). That conclusion was not perverse or otherwise one not properly open to the Judge to make on the evidence.

19. Mr McVeety did not press the argument that if the appellants individually had "no ties" with China then the mere fact that they would return together meant that they did, in fact, have "ties" with China. In my judgement, Mr McVeety was right not to pursue this point which is made in the grounds of appeal and was the basis on which permission to appeal was granted. It is clearly wrong. The mere fact that two individuals return to their own country together does not mean that, as a consequence, they have "ties" with that country. If they individually have "no ties" then their joint presence in that country cannot somehow result in them collectively have "ties" with that country. The opposite proposition is both counter-intuitive and wholly illogical and does not represent the law.

20. For these reasons, the Judge did not err in law in finding that the appellants had established that they had "no ties" with China for the purposes of para 276ADE(vi).

Decision

21. The decision of the First-tier Tribunal to allow the appellants' appeals under para 276ADE(vi) did not involve the making of an error of law. The Judge's decision to allow their appeals stands.

22. Accordingly, the Secretary of State's appeals to the Upper Tribunal are dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: