



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/40898/2013

**THE IMMIGRATION ACTS**

**Heard at Newport  
on 29<sup>th</sup> July 2014**

**Determination  
Promulgated  
on 4<sup>th</sup> August 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**YILEI HUI  
(Anonymity order not made)**

Respondent

**Representation:**

For the Appellant: Mr Hibbs – Senior Home Office Presenting Officer.  
For the Respondent: In person.

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Trevaskis, promulgated following a hearing at Newport on 9<sup>th</sup> April 2014, in which he allowed Ms Hui's appeal against the refusal of her application for leave to remain and associated direction for her removal to China.
2. Having assessed the evidence Judge Trevaskis allowed the appeal by reference to EX.1(b) of Appendix FM.

3. I find the Judge erred in law for Ms Hui entered the United Kingdom as a visitor and so is unable to satisfy the mandatory eligibility criteria as to immigration status to be found in E-LTRP 2.1. In Sabir (Appendix FM – EX.1 not free standing) [2014] UKUT 63 (IAC) it was held that the architecture of the Rules as regards partners is such that EX.1 is “parasitic” on the relevant Rule within Appendix FM that otherwise grants leave to remain. If EX.1 was intended to be a free- standing element some mechanism of identification would have been used. The structure of the Rules as presently drafted requires it to be a component part of the leave granting Rule. This is now made plain by the respondent’s guidance dated October 2013.
4. The grounds of appeal also raise Article 8 ECHR issues but these were not considered by the Judge and so it cannot be found that any error is not material.
5. I set the determination aside. As Ms Hui has not had the merits of her appeal properly considered in full by the First-tier Tribunal it was agreed appropriate to remit the appeal to the First-tier Tribunal sitting at Newport for all issues to be considered afresh. There are no preserved findings. The date and time of the next hearing, and any additional case management directions, shall be given by Resident Judge Poole upon receipt of the file at Newport

**Decision**

6. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal.**

Anonymity.

7. The First-tier Tribunal made contradictory findings in relation to the issue of anonymity in indicating in the header of the determination that no anonymity order was made but later in the determination stating that it is. I make no such order, and revoke any order if the same was made (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008), as no application for anonymity was made and it is not justified on the facts.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 30<sup>th</sup> July 2014