



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/41684/2013**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 11 September 2014

On: 14 October 2014

Prepared: 6 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS SHANSHAN ZHANG

Respondent

Representation

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer

For the Respondent: Mr P Lewis, counsel (instructed by Etmont Solicitors LLP)

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the secretary of state and the respondent as "the claimant."
2. The claimant is a national of China, born on 15th January 1983. Her appeal against the decision of the secretary of state refusing her application made on 17th September 2012 for indefinite leave to remain in the UK on the basis of long residence (10 years) under paragraph 276E of the

Immigration Rules was dismissed by First-tier Tribunal Judge Thew in a determination promulgated on 29th May 2014.

3. The Judge upheld the appellant's appeal on human rights grounds (Article 8).
4. The Judge found that although the appellant had no family in the UK, she had lived here apart from brief holidays abroad and business trips to China, lawfully since she arrived on 8th September 2002. There were compelling circumstances not sufficiently recognised under the rules. She directed herself in accordance with **Gulshan (Article 8 - New Rules - Correct Approach) [2013] UKUT 00640 (IAC)**.
5. On 25th July 2014, First-tier Tribunal Judge Collyer granted the secretary of state's application for permission to appeal. The grounds relied on asserted that the Judge did not address how length of residence, in isolation, equated to 'arguably good grounds'. Additionally, she had not addressed how length of residence is a compelling circumstance not sufficiently recognised under the rules, per **Gulshan**. It was submitted that the length of residence within the UK is sufficiently recognised within the Immigration Rules, namely Rule 276ADE. The contention was that this constitutes a material omission in the light of the claimant's concession, paragraph 50, that the Immigration Rules, including paragraph 276ADE, could not be met.
6. In granting permission, Judge Collyer stated that it was arguable that the Judge made a material error of law that could have made a material difference to the outcome of the appeal. That included the contention that the Judge had not given adequate reasons as to why length of residence within the UK amounts to arguably good grounds and compelling circumstances not sufficiently recognised under the rules justifying a further consideration of Article 8.
7. Mr Kandola relied on the secretary of state's grounds. He also submitted that the Judge failed to consider whether in considering compelling circumstances, the claimant could have returned to China in order to make an application for entry. There would have been no compelling reason preventing that.
8. In particular, he submitted that **Gulshan** had not been properly applied and that there had been no adequate reason given as to why there were compelling circumstances.
9. In response, Mr Lewis submitted that it was wrong ('nonsensical') to argue that the only reason given by the First-tier Tribunal Judge regarding compelling circumstances was the length of time that the claimant had remained in the UK. He accepted that the Judge did refer to

the length of time that she had remained here (since 2002) which was clearly a relevant consideration.

10. However, the Judge had also taken into account various other factors. That included the significant delay by the secretary of state which had led to one period of absence from the UK being extended beyond the period of time that the claimant and her employer company had wished her to remain outside the UK.
11. He submitted that the reasons given by the Judge had not been challenged. Further, there had never been any suggestion by the secretary of state or by the Home Office Presenting Officer before the First-tier Tribunal that a Tier 2 application abroad should have been considered.
12. Accordingly, contrary to the challenge by the secretary of state, the compelling circumstances and indeed the findings by the Judge in relation to Article 8, and proportionality, did not only rely on "length of residence".
13. Mr Lewis also referred to s.117A of the 2014 Act where regard must be had in all cases to the considerations listed in s.117B. Paragraph 117B sets out the public interest considerations applicable in all cases and to Article 8.
14. He submitted that the factors identified by parliament as relevant to the determination of Article 8 were factors which indeed had been considered by the First-tier Tribunal Judge when she determined the appeal.

Assessment

15. First-tier Tribunal Judge Thew has given a careful and detailed determination setting out her findings. The claimant had not been able to succeed under the long provision rules.
16. She directed herself in accordance with **Gulshan**, supra. She found that the decision was lawful and in pursuance of the legitimate aim of maintenance of effective immigration control.
17. She then turned to the issue of proportionality "and whether there are compelling circumstances not sufficiently recognised under the Rules." [53]. She set out the immigration history of the claimant who arrived in the UK on 8th September 2002, and who had been here for 11 years and eight months as at the date of the hearing.

18. She then noted the significant contribution that was being made by the claimant to British companies operating in China. Mr Lewis emphasised that this also entailed humanitarian work.
19. Further, she has set out as part of the proportionality exercise other factors including the fact that for almost all the time that spent outside the UK, was on account of her undertaking work on behalf of British companies, under their direction and control. In turn, those companies have recognised the important role the claimant plays in enabling them to meet orders for export.
20. The Judge also had regard to her academic achievements including her degree whilst in the UK, her command of English which she developed and which enabled her to undertake employment with two companies involving the production of goods in China. She was held in very high regard by LGS which dealt extensively with the United Nations and associated projects.
21. Her current employer has identified the fact that she has made and continues to make a very significant contribution to the achievements of that company and that it would be difficult to replace her.
22. A significant component considered by the Judge was the effect of delay by the secretary of state, which she properly found to be unreasonable in the circumstances. She found that she had been required to leave the UK because of the expiry of her visa. Whilst she remained in China, there was legitimate work for her to do, which was for a considerably longer period than either she or her employer wished. Accordingly she was absent from the UK for 257 days between 17th November 2012 and 3rd August 2011, as a result of the time taken by the secretary of state to make a decision regarding her work permit visa (paragraph 19). The delay was a factor that could properly be considered in relation to the proportionality component in the appeal [60].
23. The Judge found that the claimant had decided to make her life in the UK through study and employment and the extent of the social contacts. She undoubtedly had extensive social life in the UK. She had a relationship with a Mr Patterson who became very fond of her over the years. Their relationship is one which is important to them both. Her private and social life centres upon the life she has built herself in the UK and her ties to China have lessened over the years [61].
24. The Judge also took into account the public interest including the need to maintain fair and effective immigration controls. She also took into account the reasons why the claimant was unsuccessful in her application; the extent and contribution to the business interests of her employees as shown in the evidence; the high regard they have for the

claimant as well as the other factors already referred to. The Judge found that these have a significant impact upon the proportionality exercise.

25. At paragraph 65, the Judge stated that this is an unusual case in which she found that all of the factors set out at paragraph 52-64 cumulatively amount to compelling circumstances not sufficiently recognised under the Immigration Rules. Accordingly, she concluded that the decision constituted a disproportionate interference with the claimant's Article 8 rights.
26. I accordingly find that the secretary of state's submissions in the grounds relied on and in particular the assertion that the Judge did not address how the length of residence, in isolation, equated to arguably good grounds, is not sustainable.
27. It was clearly not the only reason given by the Judge. Whilst that was a relevant consideration, she also referred to all the other factors which I have summarised, including the delay in excess of six months occasioned by the secretary of state resulting in the claimant's remaining outside the UK.
28. I find that the First-tier Judge has properly directed herself in respect of the relevant law when considering Article 8, including the reference to relevant authorities such as **EV(Kosovo) v SSHD [2008] UKHL 41** and the decision of the Court of Appeal in **UE (Nigeria) and Others v SSHD [2011] EWCA Civ 975**.
29. I accordingly find that the Judge has given proper and sustainable reasons, taken cumulatively, for the conclusions reached.

Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material error of law. The decision shall accordingly stand.

Signed

Date 6/10/2014

C R Mailer
Deputy Upper Tribunal Judge