



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

Appeal no: **OA/20667/2013**
OA/20669/2013
OA/20671/2013

THE IMMIGRATION ACTS

At **Birmingham**

Decision & Reasons signed:
08.12.2014

On **08.12.2014**

sent out: **15.12.14**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

XUE Jianling & 2 others

Appellant

and

Entry Clearance Officer, PEKING

Respondent

Representation:

For the appellant: *Stephen Vokes* (counsel instructed by Lin & Co,
Birmingham)

For the respondent: Mr Neville Smart

DETERMINATION AND REASONS

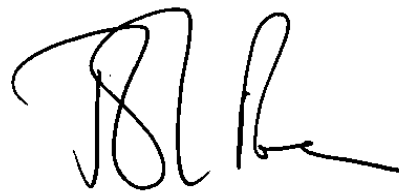
1. This is an appeal, by the appellant and her two dependent children, against the decision of the First-tier Tribunal (Judge Clive Broe), sitting at Birmingham on 16 September, to dismiss an

appeal by a citizen of China, born 11 July 1973, against refusal of a family reunion visa on 22 October 2013, on the basis that he was precluded by s. 85A of the Nationality, Immigration and Asylum Act 2002 from considering further evidence, relating to the date of the decision, but not produced with the application. The identity of the sponsor, which had been in issue, was no longer so before the judge.

2. Unfortunately, as is now agreed, s. 85A applies only to points-based cases, which this family reunion appeal was not; and it follows under s. 85 (5) (b) that the judge needed to consider only, in the curiously old-fashioned language of the draftsman, "... circumstances appertaining at the time of the decision to refuse". Since he decided, perhaps rather prematurely, not to give his views on the evidence before him at all, we do not have the benefit of whatever he might have said.
3. Mr Smart had not had the opportunity to consider the evidence in advance for himself; and, though the appellant relies on his cash wages only so far as they were vouched for, in accordance with Home Office approved practice, by HM Revenue and Customs, its effect could not conveniently be discussed or decided before me. The parties agreed that the best way of achieving this would be to allow the appeal, directing a resumed hearing before the same judge, who will be able to deal with the question.

Appeal allowed

Resumed hearing directed before Judge Broe, to decide whether sponsor satisfied maintenance requirements of the Rules on all the evidence relating to the date of the decision

A handwritten signature in black ink, appearing to be 'JLB', written in a cursive style.

(a judge of the Upper Tribunal)